

THE CAMPAIGN TO ABOLISH
IMPRISONMENT FOR DEBT IN ENGLAND

1750 - 1840

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P.J. LINEHAM

University of Canterbury

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PREFACE

Debtors are the forgotten by-product of every commercial society, and the way in which they are treated is often an index to the importance which a society attaches to its commerce. This thesis examines the English attitude to civil debtors during an age when commerce increased enormously. The chronological limits of the study are rather arbitrary, but they roughly circumscribe a period which began with the unquestioned rule of the "old law" over debtors, and ended when the first abolition act had been passed. Within this period I have sought to trace the movement of opinion, the forces by which it was fed, and the legislation in which it was reflected.

Such a study has a number of inevitable limitations. In particular, over such a long period no single attitude can receive exhaustive study, and broad generalisations must be made which can be based on a study of only a fraction of contemporary comments on the law. Unfortunately the other alternative of a close study of a shorter period would have presented even more problems for a New Zealand student with limited primary resources. Moreover so little has been published on the conditions of the lower levels of commercial society, that a smaller topic would have lacked any wider perspective within which it might have been evaluated. There are only perfunctory references to bankruptcy and insolvency within available secondary materials on the period, and almost the only

commerce described is foreign trade, and industrial manufacturing. This study has in some ways served only to supply a possible general perspective on the treatment of debtors. Research would need to be extended to a far larger literature in order to confirm some arguments. Nevertheless I cannot complain of a lack of primary resources. Over such a long period there was a very substantial amount of material in the Parliamentary Papers and Debates, and the journals and magazines of the period. Through the generosity of the University of Canterbury History Department this was supplemented by a selection of pamphlets on microfilm.

Any study on such uncharted seas is never far from even vaster oceans both alluring and daunting. There are many links which might be made with other movements of opinion in the period. Thus although the immediately relevant secondary literature available to me was small, there were many studies within the period which had some bearing on the subject, if only by way of analysis of parallel movements. I cannot pretend to have mapped or even to have noticed every one of these straits.

It is therefore necessary to mention the debts I owe to those who guided me. Fortunately, unlike the insolvent debtors of eighteenth century England, I am not in danger of being imprisoned until I repay these debts, for in that case I too might face a lifetime of confinement. But, like those debtors who sought

release under the Insolvent Debtors Act, I offer instead a schedule of my debts and creditors, conscious, as they were, that I risk perjury for failing to mention some of those who helped me.

My primary debt is to my supervisor, Dr. John Cookson, who suggested the topic, carefully pondered the varied questions I brought to him, and encouraged me to explore some of the links with the wider themes of the period. I am grateful to a number of friends and members of the Law Department who guided me through the jargon of the Common Law. I am also indebted to librarians in the Supreme Court in Christchurch, the Otago University Library, the Victoria University Library and the Alexander Turnbull Library. Particular thanks are due to the librarians in the University of Canterbury, who dragged the massive volumes of the Journals of the House of Commons from the basement, and searched for even less accessible if smaller works elsewhere. Mr Robert Erwin and Miss Barbara Lyon from the Reference Section were very kind, as was Miss Heather Cox who handled many elusive interloan requests. My thanks also to the Head Librarian for supplying for my use an electronic calculator.

Others have assisted in various ways. My friend, Mr. John George of the Economics Department, University of Canterbury, guided the statistical analyses recorded in Appendix Three. My typist, Miss Colleen Taylor, has done an excellent job. Finally my brothers, parents, and friends have added

figures, proof-read chapters and endured my conversation on the subject over the last year. To all of these persons I am most grateful. The errors must remain mine alone.

ABSTRACT

In the Common Law of England, a writ of capias could be used to arrest a debtor and hold him on bail or in prison until he was brought to trial, and thereafter until he paid the debt. This thesis studies the development of attitudes to this law in the period 1750 to 1840. At the commencement of this period the law was universally accepted, even if attempts were made to mitigate its harsh effects. By the end of the period, imprisonment before trial had been abolished, and imprisonment after trial had been restricted.

This thesis explores attitudes to the old law and investigates the sources of criticism of it in the new moral attitudes of the period and the better information on the problem. Agitation by pamphleteers is traced. Nineteenth century criticisms of the practice are related not only to compassion but to new attitudes to the function of law, although the former motive is not discounted. Parliamentary reactions to the law are analysed, and there is special attention to reformers in Parliament, dating from Lord Beauchamp in 1780 to Henry Brougham in the eighteen-thirties. The political significance of reform is considered.

An account is given of the social problems caused by imprisonment for debt. The number who suffered such confinement is investigated, and the commercial background to the question. The "trading morality" of commercial parts of society is seen as the chief opponent of reform.

ABBREVIATIONS

<u>Account of the Society</u>	James Neild, <u>Account of the Rise, Progress and Present State of the Society for the Relief and Discharge of Persons Imprisoned for Small Debts</u> , fifteenth edition, London, 1808.
<u>AR</u>	<u>Annual Register</u>
<u>Bl. Comm.</u>	William Blackstone, <u>Commentaries on the Laws of England</u> , Oxford, 1765. Reprinted, London, 1966.
<u>CJ</u>	<u>Journals of the House of Commons</u> , 1547-1832.
<u>DNB</u>	<u>Dictionary of National Biography</u> , ed. Leslie Stephen and S. Lee, London, 1908-9.
<u>EHR</u>	<u>English Historical Review</u>
<u>ER</u>	Robertson and Ellis, ed., <u>English Reports</u> , London, 1908.
GEC	G.E. C[ockayne], <u>The Complete Peerage</u> , ed. G. White, et. al., second edition, London, 1910-1959.
<u>GM</u>	<u>Gentlemen's Magazine</u>
Holdsworth	W.S. Holdsworth, <u>A History of English Law</u> , fifth edition, London, 1942-.
<u>LM</u>	<u>London Magazine</u>
<u>LQR</u>	<u>Law Quarterly Review</u>
n.d.	date of publication not given.
<u>PD</u>	W. Cobbett and T.C. Hansard ed., <u>Parliamentary Debates</u> , London, 1803-.
<u>Persons Confined</u>	James Neild, <u>Account of Persons Confined for Debt in the various Prisons of England and Wales</u> , London, 1800.
<u>PH</u>	W. Cobbett ed., <u>The Parliamentary History of England from the Earliest Period to the Year 1803</u> , London, 1806-1820.
<u>PP</u>	Great Britain, House of Commons, <u>Parliamentary Papers</u> . /Where two page references are given to a report, they refer to the page in the report and in the volume./

PR

J. Almon and J. Debrett, The Parliamentary Register, London, 1775-1813.

State of the Prisons

John Howard, The State of the Prisons in England and Wales, fourth edition, Warrington, 1792.

Then his lord, after that he had called him, said unto him, O thou wicked servant, I forgave thee all that debt, because thou desiredst me:

Shouldst not thou also have had compassion on thy fellowservant, even as I had pity on thee?

St. Matthew, xviii. 32-3.

The text of Thomas Francklin, A Sermon preached in the Chapel, (1774), in support of the Thatched House Society. See p. 101.

CHAPTER I

THE CREDITOR'S LAW

Imprisoning a man because he could not pay his debts! Seen from the vantage point of the twentieth century, the very concept seems barbaric. Twentieth century observers, it is true, think of most of the Common Law and Criminal Law of England in the past as cruel, but imprisonment for debt seems more harsh than other aspects of the Law. Eighteenth century observers would have also admitted that the law fell with a heavy hand upon its victims. But, they would want to point out, in practice juries were reluctant to convict the defendant where his punishment would have been harsh. They preferred to reduce the charge to one with lighter penalties.¹ The Law was sacrosanct, but men were skilled in evading its force.

The laws for debtors were regarded in this same manner. Eighteenth century Parliaments, with ritual regularity, passed temporary Insolvent Acts, which released most of the debtors then in gaol. They were reluctant to alter the law which put men there. For if the law of imprisonment for debt were changed, what would happen to the sanctity of contract, and to the jurisdictions of King's Bench and Common Pleas? Englishmen of the period unconsciously accepted a dichotomy: they believed that liberty was every Briton's prized possession, yet they entrusted every creditor with the right to deprive his

1 L. Radzonowicz, A History of English Criminal Law, i. 94-97.

fellows of this liberty. Henry Fielding described this sophistry in his novel Amelia, published in 1751. Fielding and his brother were exemplary magistrates in the city of London, and they were eager to reduce crime in the metropolis by enforcing the law and ridding the courts of venality. In Amelia, the bailiff who had just arrested Booth for his debts, declared his belief in liberty:

'I am all for liberty, for my part.' 'Is that consistent with your calling,' cries Booth. 'I thought, my friend, you had lived by depriving men of their liberty.' 'That's another matter' cries the bailiff. 'That's all according to law and in the way of business. To be sure men must be obliged to pay their debts, or else there would be an end of everything.'

When challenged that liberty is inconsistent with such a doctrine, he replied in a conundrum:

'Why ... would it not be the hardest thing in the world, if a man could not arrest another for a just and lawful debt ... Is not liberty the Constitution of England? Well, and is not the constitution as a man may say, whereby the constitution, ... that is the law and liberty and all that -.' ²

He was in the same confusion into which the historian can fall, unless he can unravel the law. This is the more necessary, because the debtor laws were the product not of statutes but of Common Law.³ Consequently any portrait of the eighteenth century laws can only attempt to integrate a patchwork of varying textures.

THE EIGHTEENTH CENTURY LAW

The problem with Legal History is that it is usually not history. Legal History as a discipline exists only to explain contemporary law. Because England does not

2 Fielding, The History of Amelia, (Routledge edn.), pp. 307-8.

3 Holdsworth, xi. 603.

have a Constitution as such, the best way to understand existing law is to describe how it developed. Consequently, while there is quite a large literature on the history of the debtor laws, (particularly written from the standpoint of American Law), it is unhelpful on the motives and processes of reform, and is technical in its treatment of the 'old law'. To such writers, the important reforms are the ones on which contemporary Bankruptcy practice is based.⁴ Legal History is also preoccupied only with the institutions of the 'old law'; the courts and procedures and officers. It treats the development of Common Law as a progression towards the contemporary situation. The debtor law was fated to develop as it did.⁵ Actually, eighteenth century lawyers had a similar belief, and therefore they resisted attempts to reform the law by statute.

Eighteenth century law allowed the imprisonment of a debtor in two cases. Firstly, any plaintiff claiming debts over forty shillings could hold his debtor in prison or on bail, until the case was heard in court. This was known as mesne process. Secondly, once the Court had found for the plaintiff, the debtor could be held in prison until he paid. This 'final process' was known as imprisonment on execution for judgement debts. It applied to debts of any size, although often small debts could be sought through separate Courts of Requests.

4 Cf. R. Ford, "Imprisonment for Debt", Michigan Law Review, xxv. (1927). 28, 31.

5 Cf. T. Plucknett, Concise History of the Common Law, pp. 389-393; F. Pollock and F. Maitland, The History of English Law before the time of Edward I, pp. 203-216. Pace W.S. Holdsworth, who avoided all such pitfalls.

There are several significant aspects of this procedure. In particular it acted against the person of the debtor rather than his property. English Law also allowed execution of the judgement of the court on the property of the debtor, but such execution was hedged about with legal qualifications. Consequently proceedings against the person of the debtor were almost always preferred. Such imprisonment was not seen as punishment. The debtor laws were not part of the criminal code, but of the civil law regulating relations between private citizens. Imprisonment was a protective measure to secure the debtor's person until he paid. The law assumed that he could pay, and thus imprisonment was not a penalty but a coercion. Such a theory of imprisonment owed much to the medieval concept, in which the felon was held in gaol until he was punished.⁶ Shrewd supporters of debtor imprisonment stressed that debtors were not being punished. Popular opinion and common sense, however, saw the imprisonment of debtors as a penalty for their misdemeanours, regardless of its legal status.

Another incongruity of the law was its use of civil arrest; that is the arrest of one civilian by another when no criminal offence was alleged. This practice probably began before the concept of a 'crime' was clearly understood, and when certain civil offences seemed to be offences against the King's Peace, as well as against the individual creditor.⁷ Civil arrest on mesne process was

6 Cf. R.B. Pugh, Imprisonment in Medieval England, *passim*.

7 A. Harding, A Social History of English Law, pp. 62, 66-7; Ford, pp. 26-27.

the main focus of demands for reform. The legal procedure was for the plaintiff to file a writ which ordered the county sheriff to take and hold the defendant on bail until the case was brought to trial. There were slightly different procedures in each of the superior courts. In Common Pleas the testatum capias was used; in King's Bench the Bill of Middlesex, and in Exchequer the writ of quo minus.⁸ The plaintiff only had to state the debt on oath as an affidavit; he was not required to give any proof of it.

Once the debtor had been seized by the sheriff's bailiff, he was entitled to be held for twenty-four hours at the bailiff's house, while he sought to arrange bail, to agree with the creditor as to some acceptable composition, or to pay the debt in full. This was the point in the proceedings most likely to please the creditor. The disgrace of imprisonment was for those who could not or would not pay. To be bailed out, the debtor had to produce two "respectable housekeepers" each willing to guarantee double the amount of the alleged debt. The bailiff was naturally cautious in accepting persons as bail, for should they prove insolvent, the sheriff had to pay the debt.⁹ This responsibility was graphically described in the Pleader's Guide, published in 1796:

8 A. Freedman, "Imprisonment for Debt", Temple Law Quarterly, ii (1928). 345. Holdsworth, iii. 247-251; Bl. Comm., iii. 281-286.

9 Cf. E. Farley, Imprisonment for Debt Unconstitutional and Oppressive, pp. 21-2; Barrister-at-Law, The Rise and Practice of Imprisonment in Personal Actions Considered, p.49.

But let the Plaintiff ere he sue
 In debt or case for money due,
 Swear to the sum, the writ indorse,
 And let the Shrieve said writ enforce,
 Be quick to execute, but slow
 To take the proffer'd bail below,
 Lest with the Plaintiff's Suit embroil'd,
 The Shrieve at his own weapons foil'd,
 The bond assign'd, the Debtor fled,
 Himself Defendant in his stead,
 Be doomed with curses to bewail
 The horrors of insolvent bail. ¹⁰

If bail could not be arranged to the satisfaction of the bailiff, the debtor was then sent to prison to await trial. While there, there was still opportunity to settle with the plaintiff, but he was equally liable to have other creditors begin actions against him, lest the first plaintiff receive the last of the debtor's money. The case had to be tried within four court terms and procedures for trial filed prior to this, or else it would be dismissed. It took that long to reverse a fraudulent arrest. Thus it was possible by mesne process to dispose of an unwanted neighbour for twelve months, by alleging an impossibly high debt. It was also possible to make money in this way, by commencing mesne process against a country gentleman, who would be forced to pay the 'plaintiff' to withdraw his writ.¹¹

The anomalies in the procedure were considerable. They were a consequence of various simplifications of procedure which had by the middle of the eighteenth century coalesced and eliminated a number of stages in the action which had formerly made arrest of the person costly and clumsy. Competition between the Courts of King's Bench

¹⁰ Loc cit, quoted by Holdsworth, ix. 253.

¹¹ Farley, pp. 22-3.

and Common Pleas for the profitable business of civil actions had led them to simplify the procedure, and omit the pledge traditionally required of the plaintiff.¹² Moreover, the power to arrest the debtor had been extended to such cases by alleging a fictitious trespass vi et armis (by force and by arms). The writ of arrest read that the defendant absented himself unlawfully from court, and that he "lurks, wanders and runs about in your county."¹³ None of this was meant to be taken literally; it was technical language; a form of words which expressed the origin of the procedure rather than its rationale.

Imprisonment on execution for judgement debts was the logical correlative of mesne process imprisonment. The writ of capias ad respondendum was executed, when judgement had been obtained, by the capias ad satisfaciendum, the ca-sa.¹⁴ In the trial, neither the plaintiff nor the defendant was permitted to give evidence. There were other traditional forms of execution of judgement. Fieri facias (the fi-fa), ordered the sheriff to seize the debtor's goods and chattels; levari facias, the goods and produce of the land; and elegit allowed the creditor to occupy half of the defendant's land.¹⁵ These remedies were less than efficient in recovering debts. They did not extend to freehold land, which was very often a debtor's primary asset. The notes and bills of exchange of an increasingly commercial society

12 Freedman, pp. 345-6.

13 Farley, p.63, Cf. Bl. Comm. iii.281.

14 Holdsworth, viii. 231; Freedman, p.347. ER, xci. 828.

15 Holdsworth, viii. 230; Plucknett, p.390.

were out of reach of any process of law. Also the sale of goods and chattels by the sheriff was an expensive, inefficient and slow way of recovering money. Thus in an age of great commercial sophistication, that very sophistication enabled the debtor to secure his property out of reach of his creditor, and thus it forced the creditor to use the heavy-handed weapon of arrest and imprisonment.¹⁶

And in gaol the debtor remained, perhaps for life. While there was hope that he would pay, the creditor was unwilling to release him. Because the plaintiff had to choose between a ca-sa and a fi-fa, there was no way of seizing the property while the debtor was imprisoned. To release him on compassionate grounds meant surrendering any legal means of recovering the debt. Consequently he was often forgotten in gaol.

The processes for recovery of debts were expensive. The plaintiff might well spend more than the amount of the debt in attempts to recover it. Thus there was an increasing demand in the early eighteenth century for the re-establishment of the old 'Courts of Requests' or 'Courts of Conscience' where small debts below forty shillings could be dealt with summarily and cheaply. Many such local acts were passed by Parliament in the eighteenth and early nineteenth centuries. Under the jurisdiction of these local courts, imprisonment was imposed only for a limited period of up to a year. These courts were used against a poorer kind of debtor, and their prison sentences were in effect punishment for

16 Plucknett, pp. 389-90; Holdsworth, viii. 233.

the inability to pay. This aspect of the law has been studied elsewhere,¹⁷ and is not separately covered in this thesis.

Some kind of historical background to the eighteenth century debtor law is necessary, for the remedy against the body of the debtor rather than against his property was a comparatively late development in the Common Law. In the medieval period the body of the debtor was immune, because control of it was held by the feudal lord and not the man himself.¹⁸ The early writs, fi-fa and elegit, were effective remedies in a small society with an economy less based on money. Imprisonment for debt resulted from three developments: the growth of new writs, the change in court procedure, and the expanded legal definition of contract. The Statute of Marlbridge, 52 Henry III c.23, empowered lords to arrest their bailiffs, and the statutes of Acton Burnel in 1283 and Westminster in 1285 extended such powers to merchants.¹⁹ It was gradually made more widely available. Competition between the two great courts of King's Bench and Common Pleas led the Judges of King's Bench to permit the modification of the writ of trespass, and led the Judges of Common Pleas to invent an equivalent action. Both courts subtly amended the practice when Parliament first tried to control the misuse of judicial procedures, in 1661.²⁰

17 In the excellent article by W.H.D. Winder, "The Courts of Requests", LQR, lli. (1936). 369ff.

18 Freedman, pp.332-3.

19 Bl. Comm., iii.281; Holdsworth, viii.230f.

20 J.C. Fox, "Process of Imprisonment at Common Law", LQR, xxxix. (1923). 46-59.

Imprisonment for debt was further spread by the extension of it to cases where no formal contract existed. The various kinds of debt were gradually made eligible for arrest, until Slade's Case in 1602 allowed an informal indebitatus assumpsit to be recovered by the court procedures normally reserved for formal contracts. Of this Case, Wolff wrote:

this famous decision finally elevated contractual obligation assumed by the defendant to the rank of being the prime cause of his liability.²¹

These were complex developments. Holdsworth stresses that the way they arose at the initiative of the courts provided the creditor with excessively generous remedies.²² Parliamentary attempts to regulate the laws for debtors and creditors were evaded, and a very technical procedure established. Reading the writs, the outsider might well conclude, as did Edward Farley:

Here is a sample of English justice, three forgeries and a lie to take a man's person for a trespass he never committed.²³

But the lawyers defended this by pointing to precedent. There were a number of attempts in Parliament to modify the law, but, as Marjorie Blatcher comments about such agitation in Elizabethan Parliaments:

21 H. Wolff, "Debt and Assumpsit in the light of Comparative Legal History", Irish Jurist, i. (1966). 321. Cf J.W. Salmond, "The History of Contract", LQR, iii. (1887). 166-179; J.B. Ames, "The History of Assumpsit", Harvard Law Review, ii. (1888). 53-69.

22 Holdsworth, viii. 232-3.

23 Op. cit., p.90.

Through all the attacks on the procedure there runs a note of exasperated helplessness. It defrauds the Crown of the fines on originals ... it deprives the Common Pleas of its rightful jurisdiction ... it oppresses the subject and makes a mockery of justice : In short it is a monstrous make-believe and someone ought to do something about it.²⁴

Blackstone's comments on the procedure reveal that lawyers accepted the make-believe. The law worked acceptably, as far as they were concerned. Creditors were less happy at the limitations of procedure against property. Probably they also felt that the relief available to insolvent debtors considerably weakened the force of the law.

The Insolvent Debtor laws did not cover all debtors. In a different category were debts to the Crown, including unpaid taxes, admiralty dues and fines. Such persons were imprisoned under the Exchequer writ of quo minus, and did not share in the relief measures for civil debtors. Not until the twentieth century was their position substantially improved, although it was often worse than that of civil debtors.²⁵

In contrast the bankruptcy statutes eased the situation of some debtors. There has been no satisfactory study published of the development of bankruptcy. Insolvency and bankruptcy were distinguishable by the

24 M. Blatcher, "Touching the Writ of Latitat, 'An Act of No Great Moment'", in Bindoff, et. al. ed., Elizabethan Government and Society, p.205.

25 Ford, p.26; Plucknett, p.389.

late sixteenth century, as a result of the 1571 statute : 13 Elizabeth 1 c. 7. In this statute and its predecessors, bankruptcy was regarded as a crime, which only benefitted the debtor. Therefore commissioners were appointed to take and distribute a bankrupt's property.²⁶ However the procedure developed to the advantage of both debtor and creditor, within strict limitations. Only traders with debts over £100 were eligible, and, until 1623, only British subjects. Thus only an élite were eligible for a Commission of Bankruptcy. The trader in financial difficulties could not himself choose to become a bankrupt. Instead a number of his actions, including departure from the realm, arrest for debt, and outlawry were defined as acts of bankruptcy, entitling the creditors to sue for a Commission. This Commission had power to examine the bankrupt, to take his account books and to investigate his debts. They could dispose of his property and imprison him if he would not co-operate. Thus a Commission of Bankruptcy could be a valuable protection for the interests of creditors, but as the pamphlet published in 1789, entitled Considerations on a Commission of Bankruptcy, stated, the consequences would be less desirable if the bankrupt was dishonest. If there was more than one major creditor, individuals were far better to use the writ of debt than share the assets of the debtor with other creditors.²⁷ The expenses of a

26 Shairman, p.206; Holdsworth, viii. 243.

27 Loc. cit., p.21ff.

Commission were worthwhile only if the debtor possessed substantial property. For the debtor there were real advantages in an act of bankruptcy, for if he was certificated as discharged by the Commission, his unpaid debts were cancelled, and he was immune from imprisonment. The loss of his commercial reputation was his most serious danger. Some bankrupts were imprisoned by hostile or suspicious Commissions, and such men petitioned Parliament, on occasions, to be included in the relief offered to insolvent debtors.²⁸ One such petition stated that bankrupts: "have been Traders and if discharged may be of more benefit to the nation than most of the insolvent debtors."²⁹ They were a wealthier class of debtor, for whom the right to better treatment was willingly accepted. Only in the eighteen-forties did bankruptcy and insolvency procedures begin to come together.

ATTITUDES TO THE LAW

The eighteenth century attitude to debtors contained a number of different emphases, and there was debate within the period on the fairness of the laws. One strand of opinion emphasised the respect due to the law, on the grounds of its historical development and the protection it gave to creditors. Another strand emphasised humanitarian responsibility for those in

28 Holdsworth, viii. 238-242.

29 The Case of Persons in Prison who are under Commissions of Bankruptcy, (1755?).

financial need, and the suffering resulting from imprisonment. One side stressed the creditor; the other, the debtor. One stressed the law; the other, the need for relief from the law's heavy hand. After 1770 these two strands became transmuted. The desire for relief was replaced by a desire for abolition. The need to protect the creditor became determination to strengthen the rights of the creditor. The timing of this change in attitude cannot be too closely pinpointed, but with the single exception of the comments of Samuel Johnson, nothing published before 1770 advocated new measures.

The concept of the rule of law was one of the key attitudes of eighteenth century Englishmen. It was admitted that the law had been changed in the past, and could be changed again. But most observers denied that there was any need for changes, or if changes were to be made, they ought to increase the powers of creditors. Such arguments were rehearsed whenever a community sought a Small Debts Act. For example in 1763, when the town of Bradford sought to establish a Court of Requests, it produced evidence before the House of Commons of the difficulties and problems of traders in that town, with its large trade in cloth.³⁰ That was justification enough. It was quite possible to forget that the debtor was himself a person. Blackstone, describing the development of simplified legal procedure, which was designed to hasten the operation of the law against a debtor's body, commented that: "this fiction, being beneficial

30 CJ, xxix. 433, 441.

to all parties, is readily acquiesced in" ³¹ It is doubtful whether the debtor would have accepted that generalisation.

When the debtor was borne in mind, his potential dishonesty was most prominent. Blackstone calmly commented on how unsatisfactory the law had been before processes against the person existed:

this immunity of the defendant's person ... producing great contempt of the law in indigent wrongdoers, a capias was ³² also allowed, to arrest the person.

This was the emphasis of the greatest jurist of the century. Its greatest novelist, who himself disliked the law, put the common attitude into the mouth of the bailiff, in his novel, Amelia. "Would it not be the hardest thing in the world", the bailiff remarked, "if a man could not arrest another for a just and lawful debt?" ³³ Many persons also thought that the law should take cognizance of the fact that England's greatness was founded on its commerce. Therefore the law should favour the merchant. ³⁴ Robson's study of the attorneys of eighteenth century England shows that their social status was close to that of the merchants. ³⁵ Consequently the practitioners of the law sympathised with the merchants' demands.

³¹ Bl. Comm., iii. 283.

³² Ibid, iii. 281.

³³ Fielding, Op. cit., p.307.

³⁴ Barrister-at-law, p.56. Cf L. Sutherland, "The Law-merchant in England in the Seventeenth and Eighteenth Centuries", Transactions of the Royal Historical Society, Ser 4. xvii. (1934). 149-176.

³⁵ R. Robson, The Attorney in Eighteenth Century England, p.68ff.

Most observers from the higher levels of society saw imprisonment for debt as a rightful punishment:

To speak of the Debtor otherwise than as a Rogue would appear, to the Majority of the World as an Impeachment of their Understandings,

wrote one onlooker. The creditor's justification of imprisonment was that: "He deserves it all, has brought it on himself, has been idle, extravagant, has gamed, and spent his Creditor's Money luxuriously."³⁶ Colonel James took the same attitude towards the imprisonment of Booth, in Fielding's novel, when he said: "It will be better both for him and his poor lady, that he should smart a little more."³⁷ The extravagant debtor deserved punishment, for he had committed a crime. There was great concern at legislation which: "stript the trespass of insolvency of that reproach which in its own nature it deserves."³⁸ Even Sir William Eden, who felt that imprisonment for debtors or felons: "as a punishment, is not according to the principles of wise legislation", described debtors as: "certainly a species of criminal."³⁹

The connotation of the words 'insolvent debtor' was not a pleasant one in the eighteenth century. Property owners in the neighbourhood of the Fleet prison described their tenants as: "hardly any but Bankrupts, Insolvents, and Persons of the most infamous and profligate characters", who sometimes were: "indigent

36 The Compulsive Clause in the Present Act of Insolvency, (1761), pp. 8, 20.

37 Op. cit., p.334. Cf. GM, vi. (1736). 27.

38 LM, xxxi. (1762). 12; Cf. ibid, xxviii. (1759). 693.

39 Eden, Principles of Penal Law, pp. 50, 52.

and necessitous persons", claiming poor relief from the parish when they did not deserve it.⁴⁰ With such an image, debtors could scarcely expect much sympathy.

Yet traders were not completely satisfied with the law as it stood. There were continual complaints about the ease with which debtors could spend their creditors' money in prison. Consequently some demanded the right to examine the debtor before his admission to gaol, and others sought a national Small Debts Act, with summary procedures.⁴¹

This portrait of harsh attitudes towards debtors must not stand alone. For compassion was a strong sentiment in the eighteenth century, and seems to have had a marked influence upon legislation. This compassion focussed on the persons of debtors:

That when they are Prisoners, they become a Misery to themselves, a Grievance to their families, and a Burden to their Friends, is certain; while their Confinement brings no Remedy to the too rigid Creditor; but thus deprived of their Liberty, they are prevented from becoming industrious useful Members of the Commonwealth.⁴²

This broadsheet of grievances emanated from the prisoners in King's Bench, but it met with much sympathy outside. Actually, many an opponent of the law had been imprisoned for debt at some stage in his career, including the most illustrious of them all, Samuel Johnson.⁴³ Expressions

40 CJ, xxxii. 349.

41 Eden, p.52; GM, xvii. (1747). 78.

42 King's Bench Prisoners, To a Member of Parliament, (1753), p.1.

43 Boswell's Life Of Johnson, (Oxford edn.), i. 303-4.

of sympathy for debtors were common in the journals, and there was frequent comment upon the sufferings of debtors. The Prompter in 1735 estimated that there was only one chance in a hundred that the debtor would survive his stay in prison.⁴⁴ This was scarcely an educated guess, but even Johnson speculated that five thousand debtors died in English prisons every year.⁴⁵ At least these fancies reveal a widespread awareness of: "the sloth and darkness of a prison",⁴⁶ and of the: "abuses, extortions and insults of jailors."⁴⁷ It is significant that the brief petitions regularly presented to Parliament by most debtor prisons were petitions "complaining of their distress, and praying relief." They were not requests to reform the law, but only to alleviate sufferings. The appeal was: "first to set things even, and afterward to keep them so."⁴⁸ They only desired the liberation of debtors then in prison. Such appeals were addressed to Parliament. The courts were the upholders of the law, but Parliament was considered to have a compassionate duty to mitigate the sufferings of the subjects of the realm. Parliament enshrined the principles of equity, when Common Pleas and Chancery failed to. Thus the debtors looked to the moral sensibilities of the Commons' men, for:

44 Quoted by LM, iv. (1735), 123.

45 Idler, no. 38, (1759).

46 Ibid, no. 22, (1758).

47 Eden, p. 54.

48 R. Courtville, Arguments Respecting Insolvency, p. 16.

the Compassion of the House, to save them from suffering, in a Land of Liberty, those Miseries which are intolerable in themselves, and inconsistent with the Principles of Humanity.⁴⁹

Yet even this petition, from the King's Bench prisoners, only desired that their ancient gaol be rebuilt, in order to reduce their sufferings. The Commons quickly acted to urge this rebuilding; they were not likely to respond to anything other than the revelation of specific grievances of debtors in a specific situation. Thus in 1729, a committee of the House of Commons had enquired into the state of the Fleet prison, after James Oglethorpe M.P. had complained that a friend had been held there in close confinement with prisoners suffering from smallpox, and that as a result he had died. The Report of the Committee revealed the use of torture and existence of starvation in London debtor prisons. Oglethorpe later helped debtors to settle in America, and thus helped to found the colony of Georgia.⁵⁰ But the 1729 enquiry only led to the unsuccessful prosecution of two gaolers.

Over the century, many acts of individual beneficence either supplied food to the prisoners or paid for their liberation. As W.K. Jordan has shown, such benefactions had begun by the end of the sixteenth century. Debtors were thereafter regarded as some of the main charitable objects in England.⁵¹ Not only

⁴⁹ CJ, xxvi. 457.

⁵⁰ T.G. Booth, "Fate of Debtors in Georgian England", Law Notes, xliii. (1939). 9-10; V.W. Crane, "The Philanthropists and the Genesis of Georgia", American Historical Review, xxvii. (1921-2). 63-9; A. Babington, The English Bastille, pp. 84-7.

⁵¹ W.K. Jordan, Philanthropy in England 1480-1660, pp. 264-6, 370-1.

charity recommended such action. If the state was weakened by the unemployment of its labour force, then relief of the debtors was the only way to put:

"industrious, useful Members of the Commonwealth" back to work, and thus preserve the wealth of the state. Also it was claimed that large numbers of Englishmen had fled overseas to escape the harsh weapon of civil arrest:

and it is notorious at this Instant, from these Motives there are amongst those unfortunate Fugitives many excellent Shipwrights, Woollen-Manufacturers, Mariners and various Artists, whose absence is a double prejudice to our Nation; since while England wants them, they are promoting Arts, Sciences, and Trades, among her patent Enemies and encroaching Rivals.⁵²

This theme awakened several deeply felt concerns of the nation. The imprisoned soldiers and seamen also were a loss which threatened the commercial prosperity and national security of England.⁵³

It would seem that the image of the debtor as an idle rogue was more widespread than the image of him as a national asset. Yet the two attitudes were not thought to be totally incompatible. It was possible for the creditor to believe in the justice of his power to arrest the debtor, yet for him also to help relieve the debtors in gaol. In quite another category were demands to change the law. The few writers who advanced such proposals were to be much quoted in later years,

52 King's Bench Prisoners, To a Member of Parliament, p.1.

53 Cf. Reasons Humbly Offered, (1755), p.1.; Evening Post, 5 April 1753, quoted by LM, xxii. (1753). 170.

but they won no support in their own age. Until the late seventeen-seventies they did not find a Parliamentary advocate, and thus their proposals were never very detailed. This kind of change in the law was not politically profitable, and society had no enthusiasm for it. On the whole, society tended to show "neglect and contempt" for insolvents, except for "inventing and administering" new agents of bankruptcy and insolvency.⁵⁴

It is against this background that the views of men like Sam Johnson and Henry Fielding must be understood. There were occasional proposals for law reform right through the century, but most of them wanted no more than some kind of release mechanism, so that prisoners would not remain in prison all their lives. For example in 1735 Fog's Journal printed a proposal to divide debtors into four categories; the criminal, the culpable, the pitiable and the unfortunate. The last three groups were to be discharged from prison, although the culpable required the assent of their creditors.⁵⁵ This gave the debtors little more than they already had. The greatest objection to the law was that it imprisoned many debtors for life.⁵⁶ Out of the literature of complaint, two main themes emerge. The first is the theme of liberty denied, contrary to the intention of English Law:

54 LM, xxix. (1760). 238.

55 Quoted by LM, iv. (1735). 672.

56 Cf. "Considerations on the Expediency of discharging Insolvent Debtors", LM, xv. (1746). 672.

Scarcely the most zealous admirers of our institutions can think that law wise, which, when men are capable of work, obliges them to beg; or just, which exposes the liberty of one to the passions of another.⁵⁷

This fluent exposition by Samuel Johnson of the moral shortcomings of the law was a most influential statement in later years, but other men had already argued similarly. Another important contribution was the ridicule, already quoted, which Fielding accorded the law. He regarded arrest for debt as primitive, and in an elegant passage compared the bailiff to a butcher, who had:

no other design but to cut out the body into as many bail-bonds as possible. As to the life of the animal or the liberty of the man, they are thoughts which never obtrude themselves on either.⁵⁸

A second theme in the literature of complaint was that the law was inadequate for the needs of the creditor. The debtor might be held in gaol, but there he could continue to spend his ill-gotten gains, and the creditor lacked any means to seize his property: "If, says the Creditor, I ever get my Money, I cheat the Debtor; if he never pays, he cheats me." Thus the law was paradoxical. It was "strange that it should have power to make a man useless to the Community, and not to make him discover and surrender his effects."⁵⁹ Raphael Courtville's comments were hardly the literary

57 Idler, no. 22.

58 Fielding, op. cit., p.306. Cf. GM, xxx. (1760). 613.

59 Courtville, pp. 8, 11.

achievement of Johnson's or Fielding's, but he offered specific proposals to eliminate arrest if the debtor would settle with his creditor.

Who was to be blamed for this absurd state of affairs, where the creditor's money was lost, and the debtor's liberty also? In answer to such a question, eighteenth century critics voiced a suspicion of lawyers, which was a common attitude in the period. "No-one believed that attorneys ... exhibited either of these qualities of private morality and public spirit," writes Robson,⁶⁰ and the writers on the debtor law were among the sceptics. A commentary in Fog's Journal derived the evils of the system from the number of lawyers seeking to enrich themselves. His drastic solution was to spare nine or ten, but kill the rest!⁶¹ The pettifoggers and bailiffs so prominent in Smollett's novels and other mid-century literature, have an unsavoury aura. They were the troublers of the community, who felt it was in their interest "always ... to cherish the seeds of strife and animosity",⁶² for they alone regularly profited from the litigation which was initiated to recover debts.

Suspicion of lawyers may have been widespread, but at this period it did not always lead to discontent with the debtor laws. This is seen in the lack of any literary debate on the question. Writers of pamphlets and articles did not refer to other discussions of the

60 Robson, p.136.

61 Quoted by LM, vi. (1737). 260.

62 Imprisonment for Debt Considered. Translated from the Italian, (1772), p. v.

law, but often implied that they alone had exposed the situation. And thus the laws passed in the period to relieve the debtors were largely a product of compassion rather than of discontent with the entire system.

THE RELIEF ACTS

Although Parliament never attempted to alter the law regulating the relationship of debtor and creditor during this period, it did regularly interfere to mitigate the consequences of the law. This was done in two main ways. When the gaols became too full, temporary acts were passed which effectively released most of the imprisoned debtors. Also the 'Lords' Act' of 1759 and its predecessors permitted the release of debtors held on execution for judgement debts, if they surrendered their property, although in this case the creditor was given the discretion of continuing the imprisonment at his own expense.

Such relief acts were first passed in the Restoration period. Before that, the Privy Council had frequently interfered to force specific creditors to accept compositions from their debtors. Acts of royal clemency were not unknown, either.⁶³ It was the decline in the importance of the Council which led petitioners to ask Parliament to take action. Not until 1670 was any legislation passed, but then, by the Act 22 & 23 Car. II c.20, justices of the peace were

⁶³ Holdsworth, viii. 234.

empowered to release judgement debtors, who swore on oath that their property was valued at less than £10. Eight years later, these provisions were extended to debtors on mesne process who had been imprisoned for six months.⁶⁴ In the eighteenth century two separate types of legislation developed from these prototypes. About twenty-five temporary acts were passed, each releasing most of the debtors who had been held since a specified date. Also in 1729, a permanent act was passed which continued to relieve prisoners on execution.⁶⁵

Temporary acts "for the Relief of Insolvent Debtors" were passed in 1755 (and amended in the next session), in 1761 (and amended later that year), in 1765, 1769, 1772, 1774, 1776, 1778 and in 1781.⁶⁶ There was a period of thirteen years after 1781 when no such bills were passed. They then resumed in 1794, and again in 1795, 1797, 1801, 1804 (amended in the next session), 1806, 1809, 1811, and 1812, the last two acts being amended in the following sessions. The final such bill was passed in 1813, after the passage of a permanent measure.⁶⁷

64 30 Car. II c. 4. Ibid, viii. 235.

65 2 Geo. II c. 22. Ibid, xi. 597-9.

66 28 Geo. II c. 13; 29 Geo. II c. 18;
 1 Geo. III c. 17; 2 Geo. III c. 8;
 5 Geo. III c. 41; 9 Geo. III c. 26;
 12 Geo. III c. 23; 14 Geo. III c. 77;
 16 Geo. III c. 38; 18 Geo. III c. 52;
 21 Geo. III c. 63.

67 34 Geo. III c. 79; 35 Geo. III c. 88;
 37 Geo. III c. 112; 41 Geo. III c. 70;
 44 Geo. III c. 108; 45 Geo. III c. 3;
 46 Geo. III c. 108; 49 Geo. III c. 115;
 51 Geo. III c. 125; 52 Geo. III c. 13;
 52 Geo. III c. 165; 53 Geo. III c. 6;
 54 Geo. III c. 28.

Nineteen acts over sixty-three years meant an average of one such act every three and one third years. This figure suggests a greater regularity than was in fact the case. Between 1750 and 1781 there was a gradual increase in the passage of such acts, but this was suddenly stopped in 1781. When the acts were again passed, after 1794, the average time between them was just over two years, which was a dramatic increase in frequency, resulting from the increased number of prisoners. But their passage was always erratic, and there never was any certainty that such a bill would pass.

What was the legal status of these temporary relief acts? They did not alter debtor-creditor relations as established by Common Law, even if in practice they altered the force of such laws. They were, as Romilly said, only ex post facto laws: "which took away, merely because such was the pleasure of the legislature, the stipulated effect of contracts entered into under the sanction of law."⁶⁸ Such laws operated to remove the debtor from prison, but not to exempt him from liability for the debt. The 1755 Act may be taken as an example. It required gaolers to make a list of the debtors that they held on 1 January 1755. (The choice of such a date and its distance from the date of the Royal Assent to the bill determined how many debtors would be relieved.) Those owing debts to the

68 Memoirs of Sir Samuel Romilly, ii. 410.

Crown, or more than £500 to one person were ineligible for the list. Those whose names were recorded were permitted to swear upon oath as to the nature and value of their property, and as to the honesty of their dealings. If the debtor was not suspected of perjury, he was then to be released by the justices at their quarter sessions, and his property seized and distributed to his creditors. There were also provisions to induce debtors who had fled overseas to return and surrender their property. No person released by the previous Insolvent Act could be released on this occasion.⁶⁹

Thus an insolvent act was a clumsy but effective means of releasing those debtors who wanted to leave the gaol. Over the next twenty-five years, these acts became increasingly complex and sophisticated, especially in their definition of fraudulent situations, and in their provisions for the distribution of property. Holdsworth described such acts as "a permanent set of conditions, periodically enacted",⁷⁰ and indeed the acts changed little from one bill to another, for it was the custom for the member who sought leave for such a bill simply to present the house with the text of the previous act, with blanks for dates and sums to be filled in Committee. In Committee other amendments

69 28 Geo. II c. 43, in Statutes at Large, (ed. Pickering), xxi. 247ff. All subsequent references to statutes up till 1806 are drawn from this; thereafter from Statutes of the United Kingdom and Ireland.

70 Op. cit., xi. 598.

were sometimes made to such bills. In 1765 an amendment required insolvents to advertise their intention to seek release in the Gazette. The 1768 act was extended to those who failed to pay sums settled by arbitration. In 1772 the bill was elaborated to deal with those who sought release a second time after being remanded on the first occasion. By 1778 the act was seventy-seven clauses in length, and in 1781 the whole bill was redrafted in a more logical sequence.

In 1765 the maximum debt permitted was increased to £1,000, and in 1776 imprisoned bankrupts were also made eligible, and there was an increasing tendency to manipulate these bills to suit wider circumstances. Thus special clauses were introduced in 1785 to cover two Quakers who were in gaol, and in 1772 the Marshal of King's Bench was indemnified against liability for some escaped prisoners. In 1776 Thomas Touchet, a "lunatic", was released by the Act, although he was unable to swear on oath. The timing of the acts was influenced by other events. In May 1776, as events in America became more disturbing, clauses were added to the bill in committee to enable commissioned and warrant officers to simply use the act, and to induce men to enlist for the forces, by more certain discharge if they did so.⁷¹ Much the same procedure had been used in 1761, as a result of which six hundred men were expected to enlist.⁷²

71 CJ, xxxv. 775-6, 794.

72 AR, iv. (1761). 85; LM, xxx. (1761). 164.

Were such clauses inducements for the Commons to pass the insolvent bill? And was the crowded state of the prisons a reason for introducing such a bill? There is all too little evidence available to answer such questions, but it is clear that as the bills became more frequent, opposition to them was more often heard. In 1753, when leave was sought to introduce an insolvent bill, the motion was defeated by 53 to 51 votes. It was much the same in 1754,⁷³ and the London Magazine concluded that Parliament had lost interest in helping any but the rich.⁷⁴

It does seem that knowledge of the number of prisoners in the great London debtor prisons was usually the main reason for insolvent acts. As Burke said of these acts in 1780:

They are a dishonourable invention, by which, not from humanity, not from policy, but merely because we have not room enough to hold these victims of the absurdity of our laws, we turn loose upon the public three or four thousand naked wretches.⁷⁵

The pattern in 1753, 1761 and 1768, at least, was that a petition from five hundred prisoners in the Fleet provided the occasion for the introduction of such a bill. Such petitions were often entrusted by their signatories to a sympathetic metropolitan member. The debtors might also circulate appeals to members of the House to support these bills. An appeal of this kind, emanating from the King's Bench debtors in 1753, flattered the recipient with reference to his "penetrating

73 CJ, xxvi. 762, 948.

74 LM, xxiii. (1754). 469; Cf. GM, v. (1735). 143-4.

75 Writings and Speeches of Edmund Burke, ii. 386.
Cf. 21 Geo. III c. 63, preamble.

judgement", and described, for his benefit, the horrors of a gaol, "that grave for the living."⁷⁶

Insolvency bills were introduced by private members, although they were probably referred to the Judges of the superior courts. The members who introduced the bills had reason to know of the gaols. They include Velters Cornewall of Herefordshire, William Thornton of York City, Thomas Budgen of Surrey, George Cooke of Middlesex, George Onslow of Surrey, Richard Whitworth of Stafford borough, Herbert Mackworth of Cardiff and George Nares of Oxford City. Among these, borough or metropolitan members, with large gaols at hand, are very apparent.

There is some reason, then, to think that the crowded conditions of London gaols, which together held about half of the debtors in England, was a key reason for the passage of an insolvent act. Certainly there were large numbers of London prisoners released by such acts. On one day in July 1769, 150 prisoners were discharged at the Guildhall, and in 1774, in one day 1200 prisoners were released by the magistrates at St. Margaret's Hill.⁷⁷ In 1776 before the bill was passed there were published reports of some eight thousand debtors awaiting it.⁷⁸

76 King's Bench Prisoners, To a Member of Parliament, p. 2.

77 AR, xii. (1769). 114; ibid, xvii. (1774). 139.

78 Ibid, xix. (1776). 144.

Such reports no doubt stimulated sympathy for the prisoners, but it is clear that members were interested in more than just freeing debtors. They laid particular stress on the clauses for remanding the fraudulent. In practice the courts, forced to consider so many petitions, were rarely concerned to punish any but the blatantly dishonest. This was a constant cause for complaint. "Insolvent Acts", said one pamphleteer, "empty the prisons with nearly the same want of distinction as they are filled".⁷⁹ The popular name for relief under the temporary bills was "whitewashing".⁸⁰

This was not the only fault in the temporary acts. Their other failure was their inability to touch the debtor who declined to use the act, but chose rather to spend his property in prison, or worse, in the "Rules" of the prison, outside its walls but within its discipline. An attempt was made in the 1761 act to provide compulsory powers to creditors, but the spectacular result prevented any repetition. Aided by a liberal interpretation of the act by London magistrates, the debtors were released by the thousands, to the disadvantage of their real creditors. "Fathers compelled sons, brothers, sisters, and bailiffs their employees", and the debtors soon received their property back from these sham creditors to whom it had been surrendered. Meanwhile the genuine "suffering creditors" were very unhappy at their losses.⁸¹

79 Considerations on the Laws between Debtors and Creditors, p. 9.

80 LM, xxxi. (1762). 13.

81 GM, xxxi. (1761). 476; Cf. LM, xxxi. (1762), 580; AR, iv. (1761). 111, 113, 124, 164.

Parliament was called back into session early to rush through an amending act, and there was to be no further attempt to provide compulsive powers for creditors. The defence offered by debtors in the pamphlet The Compulsive Clause in the Present Act of Insolvency had no effect.

Thus compassion and compulsion had their limits. These limits were increasingly tested in the seventeenth-seventies, as acts were passed more regularly. In 1765 there had been a feeling that the act was too close in time to its predecessor,⁸² and there was strong opposition in 1776 to attempt to allow debtors who had been re-imprisoned for further debts to be released again.⁸³ In 1778 an attempt was mounted to postpone consideration of the insolvent bill, but this was not successful. The next year, the request to introduce a bill was refused.⁸⁴

A profound change of attitudes was developing. This can be sensed in the changing preambles to the bills. In 1755 the preamble read:

Whereas many persons, by Losses, and other misfortunes are rendered incapable of paying their whole debts; and though they are willing to make the utmost satisfaction they can, are nevertheless detained in prison by their creditors; and whereas such unhappy debtors have always been deemed the proper objects of publick compassion ...⁸⁵

82 AR, viii. (1765). 90.

83 CJ, xxxv. 776.

84 CJ, xxxvi. 971; ibid, xxxvii. 212.

85 28 Geo. II c. 13.

Such a preamble remained virtually unaltered in the acts of the subsequent twenty-three years. It regards the debtors as the object of compassion as well as justice. But in 1781 the act was recast, and the new preamble was radically different:

Whereas, notwithstanding the great prejudice and detriment which acts of insolvency produce to trade and credit, it may be convenient in the present condition of the gaols in this Kingdom, that some of the prisoners who are now confined therein should be set at liberty ...⁸⁶

The grudging tone of this preamble denotes a profound alteration in attitudes, the reasons for which are traced in a later chapter of this study.

These temporary acts were operated only at the whim of Parliament. There were other relief acts however that were permanent. These were of three kinds. Firstly there were acts against frivolous arrest, secondly an act which might relieve judgement debtors, and thirdly a number of "immunities" for persons, places and days.

The law against frivolous or vexatious arrests was probably the most significant of these provisions, for rather than relieve an imprisoned debtor, it forbade his arrest if the debt was below a certain sum. The first such act - 12 Geo. I c. 29 - was passed in 1725. This laid down that there might be no arrest on mesne process where the debt or cause of action was not more than £10 if brought in a superior court, or more than forty shillings if brought in an inferior court.⁸⁷

⁸⁶ 21 Geo. III c. 63.

⁸⁷ Holdsworth, xi. 595; P.P. 1792, Report no. 97, p. 1.

The superior courts were King's Bench and Common Pleas; the inferior courts included a wide range of municipal courts and Courts of Requests. As a result there was a marked social distinction between the debtors held in the King's Bench and Fleet, the gaols of the two superior courts, and the prisoners in other gaols. In 1779 the law was made uniform for all courts.

These limitations only extended to mesne process arrest. Debts of any size could lead to imprisonment on execution. But the delay before this could be executed against the debtor encouraged the development of Courts of Requests, which would more quickly judge and execute sentence on debts under forty shillings. However the effectiveness of the limits on mesne process arrest is dubious. Creditors were not required to prove that the debt was above forty shillings, and if they sought to recover their legal costs also, it invariably would be. It was popularly thought that creditors always exaggerated the sum they had lost, in order to gain the right to arrest.⁸⁸ The act against frivolous arrests in fact failed to stop them completely. A wife could anonymously sue her husband for a very large sum, for which he could not afford bail, and thus she could enjoy a freedom not possible in his presence. And Peregrine Pickle, in Smollett's story, was arrested for an imaginary debt of £1,200, to punish him for his journalistic attacks on his patron.⁸⁹ Individual misuse

88 LM, xxxiii. (1764). 75, Cf. Holdsworth, xi. 595-6.

89 T. Smollett, Peregrine Pickle, p. 522. Cf. AR, ix. (1766). 94; ibid, xxiii. (1780). 208; ibid, xlvii. (1805). 400.

of the law continued, but arrests for small debts were curtailed somewhat by the law. Far more persons were arrested for debts between forty shillings and £20 than for any other sums, and when in 1747 the Frivolous Arrests act expired before Parliament had renewed it, there was an enormous increase in arrests, many of them for trivial sums as low as seven farthings. It was "A harvest of pettifoggers and bailiffs",⁹⁰ and it demonstrated that the frivolous arrests act was successful in stopping many arrests for trivial sums.

A second kind of permanent legislative limit on imprisonment for debt provided for the release of some judgment debtors. The act, 2 Geo. II c. 22, passed in 1729, and amended in 1730 was renewed several times until 1759. This act sought to control some of the extortions of bailiffs and gaolers, but like so much eighteenth century social legislation, it simply laid down a definition of wrong behaviour, and provided no powers of enforcement. It would seem from the observations of John Howard that the regulations were frequently breached.⁹¹

Under stringent conditions the act allowed for the release of debtors. Such debtors had to owe no more than £100, and had to provide a detailed account of their property. The creditor could veto the release for any reason. If he did, he had to pay two shillings and fourpence to the debtor every Monday for his maintenance.⁹²

90 LM, xvi. (1747). 529.

91 State of the Prisons, pp. 5, 12, 26.

92 2 Geo. II. c. 22. ss vii-xiii; Cf. Holdsworth, xi. 599.

In 1759 the fifth renewal of the act was about to expire, and on 6 March an unrevised renewal was introduced into the House of Commons. However, on 12 March, the House ordered a Committee to amend, explain and render the old act more effectual. On 10 April Alderman Dickinson presented a new bill to the House, which passed through the House. It received one amendment in Committee incorporating some compulsory powers for the creditor. The bill was passed without amendment by the Lords, and received the Royal Assent on 2 June. Because it was thought to greatly favour debtors, an insolvent bill, already in progress was dropped when the permanent act was introduced.⁹³

The act thus passed - 32 Geo. II c. 28 - was entitled "An Act for the Relief of Debtors with respect to the Imprisonment of their Persons, and to oblige Debtors ...", and it was commonly referred to as the "Lords' Act". This title it apparently inherited from the 1729 Act, which had originated in the Lords, whereas the 1759 Act did not. Walter Clay, writing one hundred years later, suggested that the bill was influenced by Samuel Johnson's criticisms of the debtor law.⁹⁴ Certainly the timing of his articles lends support to this suggestion, for Johnson's comments were published in September 1758 and January 1759. Johnson, though, wanted far more than Parliament gave: "It may be hoped, that our lawgivers will at length take away from us the

93 CJ, xxviii. 461, 471, 557, 564, 570, 573, 579, 594, 625.

94 Cf. W. Clay, The Prison Chaplain, pp.33-4; 38-9.

power of starving and depraving one another,"⁹⁵ he wrote in the second article. The essay was widely reprinted, but in the London Magazine and the Annual Review it was placed alongside an article reprinted from the Critical Review, which discussed a pamphlet comparing the French and English attitudes to the debtor laws. That article argued that:

the law ... might surely interpose,
without injustice to creditors to
limit the extent and duration of that
punishment.⁹⁶

It went on to suggest how grateful creditors would be for the right:

to compel from debtors a most exact
and rigorous account of what they
should have at that time in possession,
to be immediately secured for the bene-
fit of the creditors.⁹⁷

And this was exactly what Parliament sought to do.

The act began by forbidding the sheriff's officer from taking the debtor to a tavern. It strictly controlled gaol fees, and the rules and fees of the gaol and the legacies it received were to be displayed on a notice in the gaol. The elaborate terms for the release of the prisoner with debts below £100 are reminiscent of the suggestions in the Critical Review. His property must be listed in a schedule, and they are to be delivered to assignees who should distribute them equally to the creditors. If a creditor chooses to detain the debtor he must pay "groats", as in the old

95 Idler, no. 38. (1759).

96 Critical Review, vi. (1758). 510.

97 Ibid, p. 511.

act, but if he fails to pay them at any time, the prisoner may be released. Debtors may be compelled to use the act, so long as all their creditors are advised, and share in the dividend. Should a prisoner refuse to co-operate, he may be transported to America for seven years. Should he be set free, any property he may possess in the future will be liable for seizure to pay the debt, but he is to be immune from arrest.⁹⁸

This act remained in force until 1821. In 1786 it was amended to extend to debts of £200. In 1799 the amount was further raised to £300, and in 1797 the "groats" were raised from two shillings and fourpence per week to three shillings and sixpence.⁹⁹ These concessions to inflation are beyond the scope of this chapter. There were some earlier attempts to alter the law. In 1768 leave was sought very early in the session by Nares, Cornewall and Grey, all sponsors of temporary acts, to introduce an amending act. No more was heard of it. In 1774 and 1775 attempts were made by Herbert Mackworth and Sir Charles Whitworth to amend the bill to control the seizure of property from the debtor once he had been discharged. These attempts failed.¹⁰⁰

How effective was the Lords' Act? It was very quickly put to use in the courts,¹⁰¹ but the numbers using it were never large. The provision of "groats"

98 32 Geo. II c. 28. ss i-xx.

99 26 Geo. III c. 44; 39 Geo. III c. 50 (Cf. 33 Geo. III c. 5). 37 Geo. III c. 85.

100 CJ, xxxii. 35; ibid, xxxiv. 556 et. seq.; ibid, xxxv. 235 et. seq.

101 ER, xcvi. 567. (1759). (2. Burr. 799).

should have ensured that judgement debtors were either freed or fed by the debtor. But John Howard reported in 1777 that the Lords' Act had not given groats to twelve prisoners in the whole of England, and the cost of suing for them was often greater than the original debt.¹⁰² The debtor could rarely afford to prepare a schedule of his property to the satisfaction of the court, for this might cost two or three guineas. Above all, the act failed completely to distinguish the fraudulent debtor from the unfortunate.¹⁰³

A third permanent limitation on imprisonment for debt was a number of immunities which had long prevented arrest of certain persons, or in certain places, or at certain times. Immune from arrest were ambassadors, members of Parliament, and barristers.¹⁰⁴ Such exemptions were not popular with others. Thomas Delamayne declared that they existed so that the lawyers and members of Parliament who had the power to change the law, would not do so, because they were never threatened by it.¹⁰⁵ This was a conspiracy theory, and a more natural explanation is that the necessities of Parliamentary and legal business led to the exemptions. Diplomatic embarrassment caused by the arrest of foreign emissaries led to the extension of the immunity to them also.¹⁰⁶

102 State of the Prisons, p. 5.

103 Courtville, pp. 22-4; PP, 1792, Report no. 97, p. 31. Account of the Society, p. 280.

104 Bl. Comm. iii. 289-290.

105 Barrister-at-law, pp. 75, 87-8.

106 Cf. Walpole, Letters, (ed. Toynbee), xiv. 410-411.

There were more anomalies in immunity of places. Arrest was not permitted in the Inner Temple, so that lawyers would not have to flee when unable to pay their debts.¹⁰⁷ There was also a general immunity from arrest for persons in the so-called "verge of court", which traditionally meant an area of twelve miles in circumference around the King's residence. In this area no civil magistrate had any power, but only the officers of the Palace Court. This "verge of court" had long become stationary in the Whitehall and St. James area, and became an enclave of about three square miles within which the embarrassed debtor might find refuge from the bailiff.¹⁰⁸ In Fielding's novel, Booth avoided arrest by renting rooms in this area, until he was enticed outside by the tale that his wife had fallen sick in Mrs Chenevix's toyshop.¹⁰⁹

Readers of Amelia may recall that earlier in the novel the tale is told of the Rev. Mr Bennett, who also was pursued by bailiffs. Clergymen were not immune from arrest, and popular folk-lore declared that many innocent clergymen were detained in episcopal prisons on such charges. Mr Bennett avoided this fate, and he was able to earn some money by fulfilling preaching engagements in London. This was possible because of the other immunity, that of Sunday, when the bailiff was

107 Holdsworth, xii. 37; R.J. Blackham, The Story of the Temple, p. 59.

108 Cf. J.C. Stevens, "The Verge of the Court and Arrest for Debt in Fielding's Amelia", Modern Language Notes, lxi. (1948). 104-9.

109 Op. cit., pp. 303-5.

obliged to defer arrests.

Immunities to various persons, places and times, along with occasional insolvency acts, the Lords' Act and the limitations on arrest produced a patchwork of alleviations from the law. Yet taken together, they failed to shield more than a fraction of debtors from their fate. The only effective limitation was the cost of legal proceedings to the creditor, a cost which he could have no guarantee of recovering. The Law itself favoured the debtor, but in practice the scales did not rest quite as heavily on the side of the creditor as the Law implied. Prisoners were released by various compassionate measures and private charities, and for their part, they did not challenge the legal basis of the practice. Compared to the complaints and turmoil of the last twenty-five years of the century, imprisonment for debt seemed almost popular.

CHAPTER II

THE DEBTOR'S LOT

The insolvent debtor was the product of his circumstances. Thus any examination of the nature and extent of insolvency in the late eighteenth century verges on becoming a financial portrait of the age. A social analysis of imprisoned debtors can with similar ease become an examination of the commercial basis of the social structure of the period.

These are all fundamental questions about the eighteenth century, but in the present context it seems wiser to avoid these large problems, whilst pursuing smaller ones. In the past, the debtor has largely been forgotten by both the economic and the social historian, although a study of the less successful products of society is a useful counter-balance to studies of its achievements. This chapter will attempt to describe the debtors, particularly those of the late eighteenth century, and the first part of the nineteenth century, and also attempt to catalogue how widely imprisonment for debt was feared.

CREDIT; THE BROAD ROAD TO PRISON

The existence of debtors implies the existence of credit. And credit was, to the eighteenth century trader, the foundation of the financial web of society.

The increasing awareness in the period that England's greatness was based on its prosperity enshrined commerce in sacredness. This prosperity was assuredly based on credit, so surely credit deserved the protection of the law?¹

Certainly commerce at every level was based upon credit to a remarkable extent. Individuals at every level of society were engaged in such transactions to a degree unknown today. It was an age when piece payment was slowly being superseded, and when wages were paid at infrequent intervals.² As society became more and more engaged in money transactions, imprisonment for debt was seen as a crucial legal inducement to keep contracts and to pay bills. Therefore traders talked a great deal about credit, and if challenged, distinguished between a "wholesome" variety on which society depended, and a "pernicious" kind which caused harm.³

However one pitfall is at hand if we accept the eighteenth century idea of credit. "Credit" in itself is an elusive Will-o-the-wisp. All that can be found are particular "creditors" lending money, or selling goods on delayed payment to particular "debtors". This does not produce a class of creditors and a class of debtors, for a tailor might be both a debtor of an

1 Cf. J. Wade, Treatise on the Police and Crimes of the Metropolis, pp. 125-6.

2 T.S. Ashton, Economic History of England : The Eighteenth Century, pp. 206-7.

3 PP, 1831-2, (239), xxv. 61.

iron-monger and at the same time his creditor. As

T.S. Ashton has written:

Social history has sometimes been written in terms of debtors and creditors, on the assumption that the two belonged to different social classes. The creditor⁴ is supposed to be rich, the debtor poor.

Such caricatures were unhelpful. Eighteenth century men talked a great deal about Credit, and they treated it as a strange abstraction. Perhaps for this reason they thought that imprisonment for debt would have a deterrent value. Yet not every case of purchase on credit was safeguarded by use of the capias procedure.

The lower orders of society experienced the worst of imprisonment for debt. Mrs Dorothy George described it as one of the uncertainties in the life of the London poor. Craftsmen, mechanics and labourers were often arrested, and endured desperate poverty in prison.⁵ The debts for which they were held were usually under forty shillings, and therefore dealt with by the Courts of Requests. House rental and food bills unpaid usually led to arrest. Labourers who had to wait up to twelve months for their wages were often in bondage to small retailers, like butchers and bakers.⁶ Cash sales were unknown.

Semi-skilled and unskilled labourers were rarely granted credit for more than the essential commodities.

⁴ Op. cit., p. 206.

⁵ M.D. George, London Life in the Eighteenth Century, (Penguin edn.), pp. 297-302. Cf. Persons Confined, pp. 4, 23; PP, 1792, Report no. 97, pp. 27-8.

⁶ Wade, Treatise on the Police and Crimes of the Metropolis, pp. 130-1.

The more substantial a man's position appeared, the more credit he would receive. The fraudulent had only to claim a good name and family, and to dress accordingly, to be extended goods on credit.⁷ Landlords and publicans would give long periods of grace to persons with "an income", before issuing writs for their arrest. Dickens thought that most middle class people in the nineteenth century were tempted by this to live beyond their means.⁸ The higher a debtor in the social scale, the greater was the reluctance to arrest him. Aristocrats and gentry, like Rawdon in Vanity Fair, often evaded their debts for years, lived in the "Verge of the Court" or travelled overseas when their creditors became restive. Some gentlemen were arrested, but they usually took advantage of "The Rules" of a London prison, to live outside its walls.⁹

Outside the metropolis, arrest may have been used less frequently. However, towns with an efficient Court of Requests had an effective means to enable creditors to proceed at law to recover their small debts. Such courts were active especially in industrial towns. Exeter, which had an average of nearly ninety-nine committals to prison every year from 1798 to 1818, is one example; Liverpool in the same period averaged two hundred and twenty; Sheffield, about three hundred,

7 Cf. PP, 1816. (472), iv. 118/463f.

8 All the Year Round, xi. (1864). 463-7.

9 GM, lv. (1785). 663; Cf. Temple Bar, xix. (1867). 487-492.

and Newcastle-upon-Tyne, about sixty.¹⁰ Industrial factories often paid wages only annually, and therefore credit from traders was a necessity.¹¹ The increase in urban workers led to an increasing demand from traders for Courts of Requests. Elaborate petitions to the House of Commons became increasingly common after 1750. When the town of Bradford sought such a court, its petition explained how the existence of a large class of cotton workers greatly increased the need for trading credit, which would only be encouraged by a Small Debtors Act. The deterrent value of imprisonment for debt was itself a reason for providing credit lavishly, with little fear that money would be lost.¹²

In rural communities also, the agricultural labourer depended on the irregular income of casual employment or upon annual payment, and therefore credit was important. Yeomen were more self-sufficient, but they too rarely paid in cash. Arrest was probably less important in the country to enforce payment, but in times of agricultural distress, mesne process arrest was a constant danger.¹³

10 PP, 1819, (237), xvii. 145ff; nos. 19, 55, 77, 120.

11 Cf. T.S. Ashton, p.207.

12 CJ, xxix. 433, 441. There is a list of the Courts of Requests in Schedule A of 9 & 10 Vict. c. 95. (1846). Cf. also the Report of the Select Committee on the Recovery of Small Debts, PP, 1823, (386), iv. 183ff.

13 Cf. Ashton, p. 206; Goldsmith, The Vicar of Wakefield, p. 158 ff.

Figure One
Committals for Debt in 1801



Source: See Appendix One

Figure One provides a graphic representation of the debtors committed to prison in 1801, calculated by counties. The figures underlying it are presented in Appendix One, in which there are also cited the number of debtors James Neild found in the same counties in 1800. The figures provided are proportionate to the population in the 1801 Census. The map therefore reveals the extent to which imprisonment was a remedy for the non payment of debts in different areas. However, because this is based on records of numbers imprisoned, and not of the writs for arrest, some caution must be used in interpreting it. For although the bailiff placed the debtor in gaol, he could also transfer himself to another gaol by writ of habeas corpus, and such cases cannot be distinguished in the records. Such transferrals generally moved debtors to London, and the Fleet or King's Bench prisons, and these gaols were further filled by debtors from neighbouring counties under King's Bench or Common Pleas' jurisdiction. The two great prisons were national, not county gaols, and this explains the high figures for London, the home of the Fleet, and Surrey, the home of King's Bench. Nevertheless, even without including the figures of these two gaols, London and Surrey would have extremely high committal rates; in London 11.0 and in Surrey, 25.0. It is clear that London courts for creditors were the most efficient and most busy, even adjusted for population. They seem to have reduced the committal

rate in some of the Home Counties; Bedford, Hertfordshire, Berkshire and Wiltshire. On the other hand, Essex, Hampshire, and Kent all had active Courts of Requests in their large towns.

Counties with large cities were more vigorous in their use of imprisonment than were rural counties. Somerset, dominated by Bristol, contrasts with Dorset. York had full gaols in Sheffield and York city, and in Lancashire both the Liverpool and the county gaol were heavily patronised. The Midlands shows a consistently moderate use of imprisonment, whereas the rate in the North Country and Lake Districts are surprisingly high. The gaols in Newcastle-upon-Tyne and Carlisle both served as regular lodgings for debtors; long established heavy 'industry' no doubt resulted in familiarity with the legal processes by local traders.

The geographical incidence of imprisonment for debt is one indication of how widespread it was. Another is the social origins of those imprisoned. Lack of adequate information hampers attempts to so classify debtors, but the sessional papers of 1822 give complete lists of the names and occupations of the debtors who had recently sought release through the Insolvent Debtors' Court. Table One contains an analysis of a sample of these lists.

TABLE ONE

SOCIAL CLASSIFICATION OF DEBTORS RELEASED
BY THE INSOLVENT DEBTORS' COURT, 1821-1822. ¹⁴

	Debtors 1821-2.	Coloquhoun's Estimate of Society in 1802.
I <u>Aristocracy</u>	4.8%	1.4%
II <u>Middle Ranks</u>		
1. Agriculture	4.8	16.0
2. Industry and Commerce	52.1	10.8
3. Professions	11.1	4.2
	68.3	31.6
III <u>Lower Orders</u>	<u>27.0</u>	<u>67.0</u>
	100.0	100.0

The table has been modelled to conform to Patrick Coloquhoun's subdivision of society,¹⁵ and his estimates of the proportion in each of his categories provides a useful comparison. However, this table only supplies information about those debtors who petitioned for relief through the Insolvent Debtors' Court. Others, who came to a private arrangement with their creditors, or who could not afford relief through the Court were not recorded in this list, and this may have included sixty per cent of all debtors.¹⁶ Nor are two major groups of debtors: bankrupts, and prisoners sentenced by the Courts of Requests for limited periods. Thus large traders on the one hand, and labourers on the other, are under-represented here.

14 For the source of these figures, and an expansion of them, see Appendix Two.

15 Quoted by H. Perkin, The Origins of Modern English Society, pp. 21-2.

16 PP, 1819, (237), xvii. 145ff.

Nevertheless, the tabulated information reveals the very wide occupational and social range of the imprisoned debtors. Nearly five per cent classified themselves as gentlemen, and an even higher percentage were professional men. Government employees and clerks were well represented, but the manufacturing and labouring classes were less well represented, and unskilled labourers were remarkably few. These figures were drawn mainly from hearings at the London Court-house, so they reflect the London occupational range particularly. Nevertheless the Commercial and Industrial classes are out of all proportion to their actual numbers in society. The majority of debtors came from this group, whereas only ten per cent of society fell into this category. More detailed breakdown of the figures reveals that 38% of all debtors were merchants or shopkeepers, whereas the 1851 census showed 4.8% of Londoners in this group.¹⁷ Ten per cent of all released debtors were grocers, and altogether 18% food salesmen of various kinds.

Such figures are supported by contemporary comments. In 1819 the Warden of the Fleet prison had noted the large number of shopkeepers in prison.¹⁸ A Royal Commission in 1840, after a substantial amendment in the law, estimated that nearly two thirds of all debtors were traders. Its definition of a trader

17 F. Shepherd, London 1808-1870: The Infernal Wen, p. 389. But in this list, 49.32%, presumably mainly females and children, are listed as 'others'.

18 PP, 1819, (287), ii. 14/334.

was broad, but the general conclusion was valid.¹⁹ Thus imprisonment for debt was not just a means by which the law oppressed the poor. Arrest was most commonly used against the retail traders who themselves most often sold goods on credit. The debtor laws enabled the trading class to prey upon itself.

Both Adam Smith and Napoleon described England as a nation of shopkeepers,²⁰ yet almost nothing is known of these men, the scale of their businesses, and their financial commitments. Contemporary observers admitted this.²¹ Traders were an immensely varied group. The bulk store with a strong capital backing was quite different from the corporate merchant trading company with overseas interests, and different again from the small shop operated by its owner, which had a trifling capital investment and turnover. The large trader, whose creditors were owed more than £100 each, was protected from imprisonment by the bankrupt laws. It seems that most traders did not have high enough debts to be eligible. Although loss of good name and credit was the worst result of bankruptcy, the subtleties of the bankrupt law made it a hazardous experience, so sometimes traders preferred arrest.²² Thus from a sense of their own insecurity, traders were swift to arrest others.

19 PP, 1840, (274), xvi. viii/8. The Commission was doubtful whether farmers, attornies and surgeons could be called traders - referring to the definition of a bankrupt.

20 Smith, The Wealth of Nations, p. 337; Concise Oxford Dictionary of Quotations, p. 151.

21 J.H. Elliott, A Remonstrance addressed to Lord Brougham, (1838), p. 13. Cf. A. Briggs, Victorian Cities, (Penguin edn.), pp. 108-9.

22 Considerations on a Commission of Bankruptcy, (1789), pp. 21-28.

Traders did develop a feeling of mutual identity in their insecurity. In the nineteenth century, they saw themselves as the "middle class", which was the basis of English greatness. They contrasted themselves with the "murky multitude of poor, and destitute, and desperate persons whose increasing numbers and social disorganisation are already a source of painful alarm".²³ The law ought therefore, it was argued, to enforce the payment of debts, as an act of social homage, if for no other reason.

Such an attitude had its precursor in the eighteenth century view of social classification. Grosley wrote in 1772:

Among the people of London we should properly distinguish the porters, sailors, chairman and the day labourers who work in the streets not only from persons of condition, ... but even from the lowest class of shopkeepers. ...
 [We note] the obliging readiness of the citizens and shopkeepers, even of the inferior sort ...²⁴

Among the "lower order of traders", for whom a few pounds might determine annual profit or loss,²⁵ the determination to use the law to recover debts was common. The smaller trader had considerable inducements to allow easy credit, and to allow debts to grow until they reached a respectable amount like £20. Charles Townshend commented that these men: "rarely

23 Elliott, Credit the Life of Commerce, p. 1.

24 Quoted by M.D. George, London Life in the Eighteenth Century, p. 159.

25 PR, n.s., xxvii. (1790). 123. Cf. Fraser's Magazine, ix. (1834). 574-585.

receive money for what they sell, and being as backward in their payment for what they owe, find a quick transition from their shops to a prison."²⁶

With such problems, it is no wonder that the shopkeeper or tallyman saw his ultimate security in a power over his debtor's body. He was quick to take legal advice to "put the screw on" his debtors,²⁷ for he was nervous because of the wholesaler's demand for prompt payment, or else arrest. At the same time he was eager to sell more goods (on credit, of course), in order to increase his income! It was a never-ending dilemma.²⁸

The uncertainties of the economic climate worsened this dilemma. Dr William Smith, a compassionate visitor to the London debtor prisons, saw the need for a Charity which would lend money to such small traders and housekeepers to tide them over difficult times.²⁹ Tailors and grocers, whose individual sales were so small, were in particular need of such aid. Mr Micawber was imprisoned by a "vengeful bootmaker."³⁰ Lacking any other security, such men found refuge in the debtor laws, and formed societies to oppose attempted reforms

26 Quoted by T.S. Ashton, p. 209.

27 Broadway, ii. (1869). 309.

28 PD, Ser. 3, xxvi. 1150; Wade, pp. 127-8; Elliott, Credit the Life of Commerce, p. 94.

29 Smith, Mild Punishments Sound Policy, (1778), pp. 94-97.

30 Dickens, David Copperfield, p.187. For all the above, cf. D. Davies, A History of Shopping, p. 221 and passim.

in the law. They also bought copies of the Debtor and Creditor Guides, which gave advice as to the many Courts of Requests in London, their jurisdictions and their fees. Shopkeepers needed a simple statement of the law, so they could use it to defend their rights.³¹ Traders were in competition with each other, and the first man to arrest the debtor was more likely to force payment than the last, when there was no money left. Increasing numbers of shopkeepers, which were noted in London by 1785, worsened this problem, for many of the new businesses were inadequately financed.³²

How many debtors were imprisoned? In the eighteenth century, no one really knew. Samuel Johnson speculated that twenty thousand debtors were in gaol. He calculated that one in every three hundred Englishmen so suffered, and including their families, one per cent of the nation was directly affected, and the nation lost £300,000 every year through their inability to work.³³ This was a fine piece of mercantilist reasoning, and Johnson was not the only one to engage in such speculation, in order to condemn the practice. In 1735 an estimate of 12,000 to 15,000 debtors was given by the Prompter,³⁴ while the Daily Gazetteer in 1736 suggested a figure of 60,000.³⁵ In 1764 an eloquent writer

31 Cf. The Debtor and Creditor's Guide ... A Guide to the Recovery of Debts, (1813), and The Debtor and Creditor's Guide, Including Directions for the Recovery of Debts in London, (1825).

32 T.S. Ashton, p. 216.

33 Idler, no. 38. (1759).

34 Quoted by LM, iv. (1735), p. 172.

35 Ibid, v. (1736). 18.

estimated that:

/from/ such Monkery ... the author computes no less than upwards of seventy thousand such sort of Monks ... confined in the several jails of England.³⁶

Other generous estimates of sixty thousand³⁷ and forty thousand³⁸ prisoners can only be mentioned. Yet not until John Howard began to visit prisons was any attempt made to count the prisoners.

Howard, with methodical zeal, set out to visit every prison in England, and examine their conditions. The figures he gathered were therefore taken over a long period, and they do not provide a completely accurate estimate of the number of prisoners. However, his 1776 figures were as follows:³⁹

Debtors	2437
Felons	994
Petty Offenders	<u>653</u>
	4084

The debtors were widely distributed through the Kingdom:

London and Middlesex	1274
English Counties	752
City and Town Gaols	344
Wales	<u>67</u>
	2437

In subsequent visits he counted 2078 debtors including 119 women in the year 1779, and 2139, including 139 women in 1782.⁴⁰

36 Ibid, xxxiii. (1764). 34.

37 R. Courtville, Arguments respecting Insolvency, p. 9.

38 Considerations on the Laws between Debtors and Creditors, p. 43.

39 State of the Prisons, p. 17.

40 Ibid, p. 492. Individual Gaols are listed on pp. 486-491.

Such figures were a substantial revision of popular estimates. They indicate that the gaols were used more to hold debtors than to hold felons. The age of punitive imprisonment had not yet begun. The slight decline in Howard's figures for 1779 and 1782 reflects the passage of a bill in 1779 which limited mesne process arrest to debts of £10 and over, rather than the old forty shilling limit. It is surprising how little this affected the numbers of debtors, for contemporary observers thought that the law greatly reduced the prisoners.⁴¹

In 1792 Parliament first expressed interest in compiling a total of the number of debtors imprisoned. The returns desired by the Select Committee were only incompletely supplied by sheriffs, but they contained a valuable analysis of the nature of the debts for which prisoners were held. They may be tabulated as follows:⁴²

TABLE TWO

PRISONERS FOR DEBT IN 1792

Held on Mesne Process		Held on Execution			
Debts £10 - £20	326	Debts to £20	110		
Debts £20 - £50	392	Debts £20 - £50	185		
Debts £50 - £100	215	Debts £50 - £100	141		
Debts £100-	<u>318</u>	Debts £100-	<u>270</u>		
	1251		706	Total	1957
		Crown Debtors			<u>150</u>
		Total			2107

⁴¹ Autobiography of Francis Place, ed. M. Thale, p. 31.

⁴² PP, 1792, Report no. 97, pp. 22-24. Cf. CJ, xlvii, 6 June 1791; ibid, xlvii. 24.

The heavy use of mesne process arrest, especially for debts below £50 is very noticeable in these figures. The total number of debtors is consistent with Howard's estimates. The trial and judgement of debtors was more often completed for debtors owing larger sums.

James Neild, the Treasurer for the "Society for the Discharge and Relief of Persons Imprisoned for Small Debts" also produced figures for every gaol in the country. In 1800 he recorded the existence of 2003 debtors in prison,⁴³ and he continued to update these figures.

The figures given above were estimates of the approximate number in gaol at a point in time. In one sense such figures are deceiving, for often debtors were in prison for no more than short periods. After 1785 Courts of Requests were not permitted to imprison small debtors for more than forty days. Consequently the low figure of debtors on execution for debts up to £20 disguises a much larger number of committals. In theory all other prisoners could be held for life, but temporary insolvent acts, and the Lords' Act liberated most of those debtors who did not settle with their creditors when imprisoned. Some debtors remained in prison for very long periods, but they were not typical. The 1792 Committee recorded the harrowing tale of the woman who died in the Devon County Gaol after forty-five years' imprisonment for a debt of £19, and it commented that debtors were: "often confined for life

⁴³ Persons Confined, passim.

or for a very long course of years," for debts of less than £20.⁴⁴ Certainly Howard and Neild never isolated for comment any imprisonment of less than six years, so any confinement for less than this cannot have been rare.

The average duration of a debtor's stay in prison is a figure of little value, given the wide deviations from this average. A prisoner relieved by the Lords' Act had to serve eighteen months in gaol before he could apply for his discharge. The number of committals every year was always far above the prison population at any particular time. It can be estimated that about 5454 prisoners were committed in the year 1800, whereas Neild estimated that there were 2003 prisoners that could be counted when he visited the gaols in the same year. Thus the average period of imprisonment must have been something below six months.⁴⁵

Imprisonment for debt seems likely to provide an indicator of the economic climate of England. This is borne out in statistics which can be collated for the committals to prison in England and Wales in the period 1798 to 1818. Such figures are listed below:

⁴⁴ PP, 1792, Report no. 97, pp. 24-25.

⁴⁵ The figure for committals was estimated from the figure calculated for ninety-nine gaols, in Table Three, proportionately increased on the basis discussed in Appendix One.

TABLE THREECOMMITTALS TO NINETY NINE PRISONS 1798-1818⁴⁶

1798	3,900	1809	5,719
1799	4,029	1810	5,943
1800	4,363	1811	6,274
1801	4,587	1812	6,198
1802	4,536	1813	6,905
1803	4,212	1814	6,459
1804	4,498	1815	7,279
1805	4,868	1816	8,625
1806	5,263	1817	9,204
1807	5,368	1818	8,369
1808	5,030		

Altogether there were one hundred and forty-two prisons in England and Wales, and in 1818, the first year in which complete figures are available, there were 10,372 persons committed to them for debt, so these figures do not show how many people in England were touched by arrest. However these figures do show a remarkable growth in the use of imprisonment for debt over the period. It had grown out of all proportion to the growth in population, until by 1813 the only alternative to a permanent Relief Act could be more frequent temporary acts, or else the gaols would be intolerably crowded. This growth in the numbers of debtors suggests a greater recourse to the civil law in defence of property. It parallels another sharp rise in the increase in criminal prosecutions for larceny

⁴⁶ Calculated from the figures in individual gaols, in PP, 1819, (237), xvi. 145-183.

and other offences against property. The morality of trade was becoming more pervasive. So it became necessary to provide more assistance to the victims of trade.

The annual fluctuations in the committal rate, as revealed by this table are also significant. It seems logical that the numbers imprisoned would be affected by the financial climate. Yet what would the effect be? Did insolvencies increase proportionately with the worsening economic climate, as shopkeepers with decreasing turnovers imprisoned those unable to pay their bills? Or was the use of legal processes to recover debts always in a fixed ratio to the amount of credit available, and thus reduced in times of economic depression? It was commonly thought that the first kind of relationship existed.⁴⁷ Debtors constantly reiterated that they were in difficulties because times were hard. For example a 1753 pamphlet appealed for compassion for debtors, for their plight was caused by the consequences of unsettled trade during the war, cattle diseases and natural calamities.⁴⁸ Again in 1816, a Parliamentary Committee heard evidence that the "general depression of trade" had caused a dramatic rise in the numbers of debtors.⁴⁹ It was thought that the financial crash of 1825-6 led to a huge increase in

47 Cf. Fraser's Magazine, ix. (1834). 646.

48 Reasons Humbly Offered for an Act for Relief of Insolvent Debtors and Fugitives, p. 1.

49 PP, 1816, (472), iv. 46/390, 59/403.

the number of arrests for debt.⁵⁰

Although there is no evidence for this, some of these economic crises may have coincided with increases in arrests for debt. The cause for the increases need not have been the crises themselves, but rather the panic which occurred during such infrequent events. With the advent of a national economy, such panic and its consequent effect upon the behaviour of creditors became more widespread. At all other times when there was no emotional reaction to the economic situation, the state of the economy was not a factor in the decision of the creditor to arrest his debtor. In fact, far from arrests increasing as the economic climate worsened, the reverse was the case.

Statistical analysis reveals that until 1813, according to the figures given in Table Three, there was a significant proportionate relationship between the number of debtors and the prosperity of the business world. This is expressed in the equation:

$$y = 78.74x - 185.78 \quad (\text{S.D for } y = 56.11)$$

where y equals Rostow's well known index of the business cycles in England,⁵¹ and x equals the extent to which the actual number of debtors diverged from the projected figure, in any given year.⁵² In other words, as is illustrated in Figure Two, the number of debtors tends to be above average in years of good economic conditions,

50 Wade, p. 114.

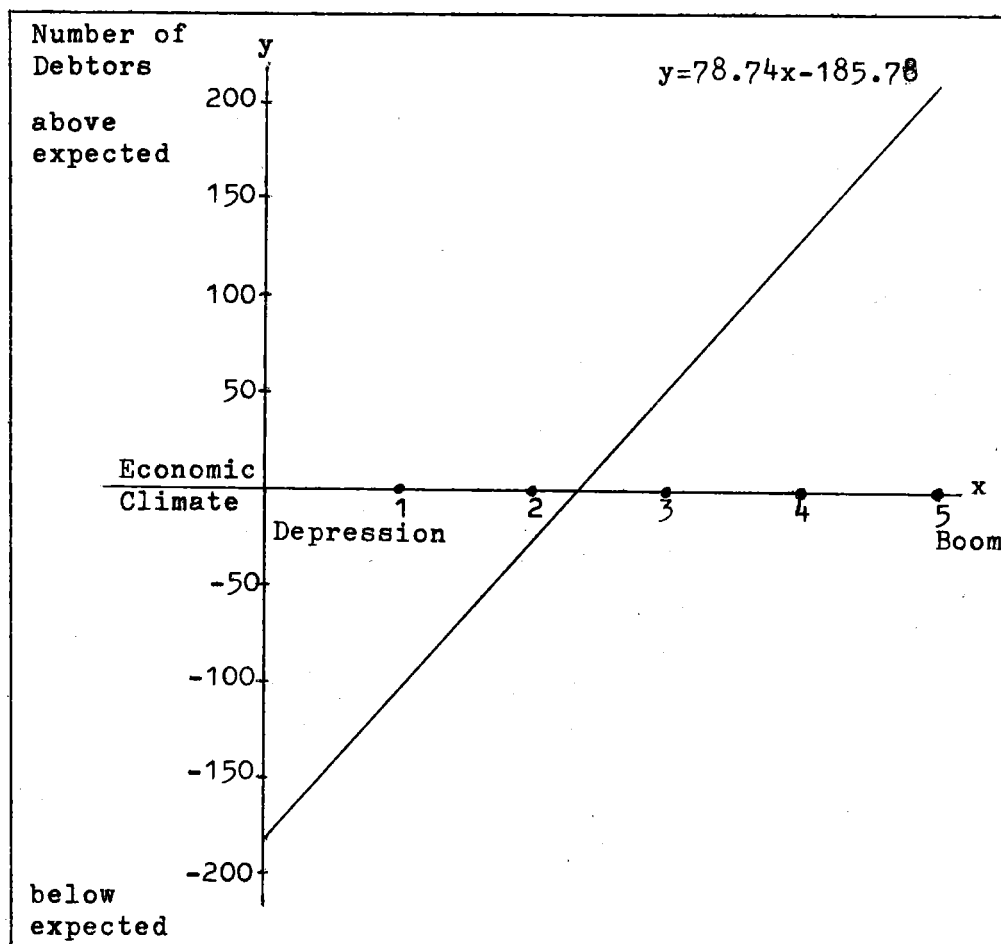
51 Gayer, Rostow and Schwartz, The Growth and Fluctuation of the British Economy; i. 306.

52 See Appendix Three.

and below average in bad economic conditions.

FIGURE TWO

DEBTORS AND THE ECONOMIC CLIMATE



It should be noted that these results are based not on the writs of capias, or even of the numbers arrested, but only on figures of those imprisoned when unable to arrange bail. James Neild's figures suggest that only half of those against whom procedure was commenced were arrested, and of those arrested nearly half managed to arrange bail.⁵³ This does not decrease the significance of the results obtained. Gayer, Rostow, and

⁵³ Account of the Society, pp. 40-41.

Schwartz regard the number of bankrupts as in an inverse relationship with the business cycle, but the reverse is true for insolvent debtors. The number of committals for debt seems to have been greater when credit was more readily available, and when credit was scarce, the rate of arrests diminished proportionately. Thus it would appear that the smallest shopkeeper varied the credit he made available to his customers, according to business conditions in the wider world. It would also seem that the shopkeeper used arrests as a regular means of enforcing the payment of a proportion of his debts. In economic depression, when trade was hard, and credit short, his use of arrests actually declined.

This relationship holds good until 1813. In that year the law was changed, and at the same time the committal rate changed dramatically. The enormous increase in imprisonment for debt after the Napoleonic Wars was not caused by the depression, but by the change in the law, for the rise in numbers began before 1815. This increase only inflated a sustained rise in the number of debtors, that can be traced back to 1798, and almost certainly accounts for the increased passage of temporary insolvent acts in this period. The rise was not the result of the growth in population, for when the increases recorded between the censuses of 1801, 1811, and 1821 are absorbed, the debtor figures still increase 59.6% more than them over the twenty one years. Even the industrial "take-off" of these years was not so dramatic as the "take-off" in the committals for debt, which is expressed by the formula:

$$y = 4786.15 + 7.1x^2$$

where y is the number of debtors in any given year
and x is the year, where 1798 = 1; 1799 = 2 ...

S.D of $y = 1055.88$

Therefore the increase in commercial litigation must be traced to a change in the behaviour of traders and debtors.

THE SHELTER OF A PRISON

English law laid down that any person could make an affidavit at the office of the county sheriff, in order to arrest his debtor. Such an affidavit cost between £4 and £6.⁵⁴ The sheriff then set bailiffs to find the debtor. Thus was begun a tedious legal process which would deprive the debtor of his liberty. It is necessary to understand what the debtor was thus to experience, if the growing opposition to the practice is to be appreciated. While it is impossible to document the regional variations in the practice here, the image which imprisonment had in the public eye is of prime importance.

Nearly half of all debtors upon whom writs were issued were not found. Nevertheless bailiffs were not lacking in cunning and cruelty in their efforts to take debtors.⁵⁵ On arrest, the debtor could attempt

⁵⁴ E. Farley, Imprisonment for Debt Unconstitutional and Oppressive, pp. 127-131.

⁵⁵ Metropolitan Magazine, x. (1834). 40-43; PP, 1831-2, (239), xxv. 64.

to arrange bail for double the sum specified in the writ. A statute of 1803 waived the necessity of bail if the debtor deposited the sum specified in the writ, and £10 to cover costs, in the hands of the bailiff.⁵⁶ Twenty-four hours at least were allowed to the debtor, to arrange bail, before he was sent to prison. During this period he was held in the bailiff's house.

The bailiff's "sponging house" had a notorious place in the rogue's gallery of the English debtor. Of such places, Francis Place wrote that the debtor was "seldom allowed to go to Gaol until he had parted with his last shilling."⁵⁷ London bailiffs maintained hostels or hotels of a kind, although their guests were required to pay cash for services rendered. Henry Fielding's description of the extravagant fees levied in such establishments, and the immoral behaviour which occurred there, was only too true.⁵⁸ A century later nothing seemed to have changed. Such houses still provided: "two or three private rooms for those insolvent gentlemen who chose to pay a guinea-a-day for the accommodation."⁵⁹ The minimum fee was ten shillings a day, and debtors unable to pay this were sent direct to prison. The law did attempt to control the behaviour of bailiffs, but such laws were not enforced.

56 43 Geo. III c.46.

57 Autobiography of Francis Place, p. 32. Cf. State of the Prisons, p. 7; Broadway, ii. (1869). 230.

58 Amelia, pp. 304-5, 494ff.

59 "Behind the Bars", Temple Bar, xii. (1864). 250.

The bailiff was not allowed to carry a debtor to a tavern against his will, but Smollett's hero, Peregrine Pickle, was not alone in suffering such treatment.⁶⁰

Every bailiff's house gained a certain local reputation. Readers of English literature will recall "Mr Simon's House", "Butler and Co., Stanhope St., Clare Market", and "Mr Moss's establishment".⁶¹ The last mentioned is famous as the place where Col. Rawdon spent an evening at the climax of Vanity Fair, while his wife amused herself with Lord Steyne, careless of her husband's whereabouts. Rawdon's sombre reflection that "she grudged me a hundred pounds to get me out of quod"⁶² suggests the kind of impact that arrest could have.

The sponging house was only a temporary sanctuary, and poorer debtors often chose to go straight to prison. Mr Pickwick chose this course of action, as did the shabby-genteel heroes of Smollett's novels. Roderick Random:

refused to go to a sponging house; where I heard there was nothing but the most flagrant imposition; and a coach being called, was carried to the Marshalsea, attended by a bailiff and his follower, who were very much disappointed and chagrined at my resolution.⁶³

Other debtors were imprisoned when they had run out of money, or when their writs had been returned to the sheriff's office.⁶⁴ The choice of prison seems to have

60 2 Geo. II. c. 22; 32 Geo. II. c. 28 s.1. Smollett, Peregrine Pickle, p. 522.

61 Temple Bar, xii. (1864). 249; Metropolitan Magazine, ix. (1834). 217; Thackeray, Vanity Fair, ii. 209.

62 Op. cit., ii. 226.

63 Smollett, The Adventures of Roderick Random, p. 367.

64 Cf. ER, ci. 21-23. Planck v. Anderson. (1792).

been determined by the county in which the debtor had been taken, or the Court of Requests from which the writ had issued. Both King's Bench and the Fleet were national prisons for their respective courts, the entrance fees to which deterred poorer debtors. The debtor could change prisons by writ of habeas corpus. Wealthy debtors in London sometimes spent winter in the well-heated Fleet prison, and then transferred to King's Bench for the summer months.⁶⁵

A prison was the private enterprise of its gaoler, and he naturally sought to make it run as a profitable business.⁶⁶ There were few statutes which regulated such prisons, and even those provisions were seldom enforced. Debtors were required to be kept separate from other prisoners, and female prisoners from males. The gaoler's fees were to be displayed in the gaol, as was the list of charitable bequests available. But there was no requirement until 1778 that medical aid be available to prisoners.⁶⁷ This was the extent of the statutes on prison conditions, and John Howard reported how ineffective even these laws were.⁶⁸

Thus in prison the debtor was removed from further demands by his creditor, but he was faced with new problems. He was expected to provide food and bedding at his own expense. In the case *Manby v. Scott*, Justice Hyde declared that:

65 Chambers' Journal, no. 25. (1864). 388. Journal of the House of Lords, (1809) pp. 188-9.

66 S. and B. Webb, English Prisons under Local Government, pp. 5-6.

67 2 Geo. II. c.22; 32 Geo. II. c.28; 14 Geo. III. c.59. Cf. Holdsworth, xi. 598-9.

68 State of the Prisons, p. 8 and passim.

If a man be taken in execution and lie in prison for debt, neither the plaintiff at whose suit he is arrested, nor the sheriff who took him, is bound to find him meat, drink or clothes; but he must live on his own, or on the charity of others: and if no man will relieve him, let him die in the name of God, says the Law; and so say I.⁶⁹

Only debtors detained in prison by their creditors under the Lords' Act were an exception to this. In this case the opposing creditor had to pay sixpence a day to his prisoner as "groats".

Concern for the profitability of their prisons led gaolers to divide the debtor ward into two sections. On the "master's side", reasonable accommodation was provided at a weekly rental. Debtors whose total possessions were worth less than £5 were kept on the "common side", where the only fees charged were for entering and leaving the gaol. These committal and discharge fees were supposed to be approved by the sheriff, and in 1808 such fees varied from one shilling to £2-7s, and were mostly about ten shillings.⁷⁰ On the master's side prisoners were "chummed" together in cells of three or four prisoners, with their families. Common side prisoners were kept in primitive wards, "much more unhealthy ... than a pigstye",⁷¹ although they had the compensation of right to the charitable gifts to the prison. The penniless prisoner was in a desperate situation.

69 ER, lxxxvi. 786. (1663).

70 Account of the Society, pp. 148, 165 and passim.

71 W. Smith, quoted by J.L. and B. Hammond, in Johnson's England, ed. A. Turberville, i. 324.

The extent of his problems varied from county to county. In some cases poor prisoners were so abandoned that their very survival was not assured. In other cases, county charities at least provided the debtor with Christmas dinner, or even a weekly allowance. Generalisations would be difficult. James Neild recorded details in 1800 of 113 prisons in England and Wales where debtors were held. He found that thirty-nine of them provided no allowance for the debtor at all.⁷²

The prisons of London usually held about one half of English debtors. The rate of imprisonment seems to have been higher in London than elsewhere, due to the greater availability of judicial procedure to the London creditor, as well as the wealth of the metropolis. Also the national prisons of King's Bench and Fleet attracted debtors from the counties. Newgate was used for debtors as well as felons until 1815. In the eighteenth century there were also a number of smaller debtor prisons in London, including the Marshalsea, Giltspur St. Compter, the Borough Compter (which was commonly known as "the Clink"), the Coldbath Fields prison, the Giltspur St. Ludgate, the Poultry Compter, the Tothill Fields gaol, and the Whitechapel gaol, each of which served specific parishes or liberties. Only the Marshalsea survived into the nineteenth century; the others were replaced by Whitecross St. prison and Horsemonger Lane prison. Because so many debtors were held in London gaols, a

general account of them provides valuable illumination on prison conditions, based on an extensive literature.⁷³

Of the two great prisons, King's Bench was much larger than the Fleet. In 1800 it held 400 prisoners and their families. (The families of prisoners were only excluded from living in the gaol in 1816.) Later in the century its average number of prisoners was about six hundred, with a record number of 937 in 1820. A further one hundred prisoners were held in the "Rules" of the prison. Consequently King's Bench was a community of its own.⁷⁴ The same was true of the Fleet prison, which held from 250 to 300 prisoners in the early nineteenth century, plus about seventy prisoners in the Rules.⁷⁵ This prison was very crowded, but after the change in the law, in 1842 it was closed down, and the King's Bench was renamed the 'Queen's Prison' and became the national debtor gaol.

Both King's Bench and Fleet prisons had a certain legendary reputation surrounding them. They were both the object of attacks by the Gordon rioters in 1780. They bore the image of "bastilles"; cruel symbols of the deprivation of freedom from unfortunate

73 Besides the writings of Howard and Neild, cf. William Smith, State of the Gaols in London and Westminster, (1775) and the anonymous The Debtor and Creditor's Assistant, (1793). Nineteenth century writers wrote extensively on the subject, especially W. Dixon, The London Prisons, (1850). A London doctoral thesis by I.P.H. Duffey, "Bankruptcy and Insolvency in London in the late eighteenth and early nineteenth centuries", (in preparation 1973) should further illuminate understanding of the topic.

74 PP, 1826-7, (319), xix. 239ff; Persons Confined, pp. 21-3; Account of the Society, pp. 287-306.

75 PP, 1826-7, (424), xix. 251ff. Account of the Society, pp. 204-213.

insolvents. This must have been reinforced by the "begging grate", a kind of cage projecting from the front of the Fleet, and bearing the inscription: "Pray remember the poor debtors". Common side prisoners took turns at being displayed in the cage, and it became a symbol of all the sufferings within.⁷⁶

Yet each prison was fully equipped for social life. Master's side prisoners had access to a coffee-house, a bakehouse, a wine-room, and a public "tap", all of which increased the profits of the keeper.⁷⁷ Until Lord Hardwicke's Marriage Act of 1753, alehouses within the Rules of both prisons were the scene of "Fleet Marriages", which insolvent clergymen performed and recorded in temporary registers, thus destroying many young girls' fortunes and virginity.⁷⁸ The "Rules" was always a notorious region of London.

In 1793, a guidebook to the two prisons was published. The Debtor and Creditor's Assistant was an accurate work, evidently written by an inmate, who, like some of the prisoners he mentioned, thought of the Fleet as his home. Equipped with its own sports ground for its own unique sport, named "raquets",⁷⁹ the Fleet, like the King's Bench, was even the setting for dinner parties and hired service. The very wealthy usually lived outside the prison in the "Rules", and

76 J. Ashton, The Fleet, Its River, Prison and Marriages, pp. 328-9.

77 Debtor and Creditor's Assistant, p. 6.

78 J. Ashton, passim.

79 Op. cit., p. 46.

other prisoners were entitled to three "day-rules" per term, at four or five shillings each.⁸⁰

Thus for some prisoners, the gaol was a sanctuary and a resort, rather than an imposition. By the early nineteenth century, public servants, hounded by their creditors, took leave and went on "the grand tour" which carried them no further than St. George's Fields!⁸¹ Such debtors naturally preferred to be held in the Fleet or King's Bench if they could afford the committal fees. Mr Pickwick, when he was arrested for refusing to pay the damages awarded to Mrs Bardell for her action of breach of promise, was almost imprisoned in Whitecross St., but he was persuaded to move by Habeas Corpus to the Fleet, for Whitecross St., with sixty beds to a ward, and no privacy at all, was no place for a gentleman.⁸²

And that was true of most of the other London prisons also. The debtors' ward at Newgate was "dark and stinking",⁸³ and there were no regrets when it was replaced in 1815. A Select Committee of the House of Commons described the prison as quite unsuitable for debtors, especially its Common Side.⁸⁴ The same report also condemned the Giltspur St. and Poultry Compters, which served East and West London, and

80 Ibid, pp. 10-11; H. Hamilton, Doctor Syntax, pp. 209, 234.

81 Metropolitan Magazine, xi. (1834). 138; PP, 1816, (472), iv. 33/377.

82 Dickens, Pickwick Papers, p. 576.

83 A. Griffiths, The Chronicles of Newgate, p. 97. Cf. W. Cooper, History of Newgate and Old Bailey, pp. 30-33; A. Babington, The English Bastille, p. 81ff.

84 "Report from the Committee on the State of the Gaols in the City of London", PP, 1813-14, (157), v. 294ff.

criticised the Borough Compter in Southwark, and the Ludgate, which held debtors who were Freemen of London. Whitecross St. prison was erected to relieve these prisons, and its inmates were provided with free food and a pint of wine a day. Only poor prisoners were allowed into the prison, and John Wade wryly commented that the "lower order of debtors" were thoughtfully parted from the corrupting influence of "those who are called gentlemen and swindlers and cheats".⁸⁵ The Marshalsea prison survived beyond these other prisons, until 1842. It too held mainly short-term prisoners. "A Marshalsea generation might be calculated as about three months",⁸⁶ wrote Dickens, although he also described the "father of the Marshalsea", a grand old man who had been detained most of his life there, on legal technicalities.

The county gaols were far worse than those of London. Dr Primrose, Goldsmith's sentimental clergyman, found only "execrations, lewdness, and brutality"⁸⁷ in the prison where he was held. These conditions were often due to the smallness of the gaol. In 1801, sixty-four prisons out of ninety-nine had fewer than twenty committals of debtors, and consequently, like Dr Primrose, they were rarely separated from felons.⁸⁸ Scattered among such prisons were poor debtors, like Simon Southwood, "a very inoffensive man, but evidently

85 Wade, Treatise on the Police and Crimes of the Metropolis, pp. 254-5.

86 Dickens, Little Dorrit, p. 73.

87 Goldsmith, The Vicar of Wakefield, p. 169.

88 PP, 1819. (237), xvii. 145-183, passim.

deranged", who had been confined forty years for a debt of £15, when the House of Lords heard of his plight.⁸⁹

County gaols held the majority of such prisoners. Some of these gaols were converted castles; for example in Oxford, Lancaster and Chester. In such gaols, debtors received rough treatment. As late as 1812, the Commons received a petition from Thomas Houlden in Lincoln Castle gaol, complaining that he had been deprived of the freedom he expected in an English gaol. He had been locked in a cell, and later thrust into the castle dungeon. Moreover, while the sixty-five debtors were confined to fourteen rooms, the gaoler kept thirteen rooms for his family's use. The complaint was upheld by a Select Committee.⁹⁰

Thus the debtor in the counties suffered harsher treatment from his gaoler than his counterpart in the metropolis. He also received less charitable aid. Besides the many prisons that had no allowance for debtors, there were prisons which provided sixpence a week, or a small loaf of bread a day for poor prisoners. In the nineteenth century, these allowances were much extended.

Conditions in prisons became a popular topic for discussion in the nineteenth century. The aims of criminal imprisonment, and the degree to which it should be retributive and remedial were bitterly debated, and a number of experimental prisons were built. This debate resulted in a number of distorted accounts of

89 Journals of the House of Lords, 1809, p.191.

90 CJ, lxvii. 406, 873.

penal history. All the parties agreed on only one point. If the prison was to be more efficient, or if it was to be more retributive, and penal labour be exacted from felons, then debtors were a hindrance to reform. Debtors were not held under the criminal code, and could not therefore be treated more harshly. Yet debtors were about half of the existing prison population. Thus the reform of prisons involved the separation or the removal of debtors.⁹¹

In many ways, debtors came to be regarded not so much as part of the prison population, but as an appendage of the poor. In both Poor-house and debtor prison were the failures and unfortunates of society, but ought they to be blamed for their failure? To this creditors retorted that the inmates of the gaols were not "poor debtors" but fraudulent cheats, just as the inmates of poorhouses were wantonly irresponsible. They proved this by describing gaol conditions. And thus the prison conditions became a central issue in the debate over debtors.

THE ATMOSPHERE OF THE PRISON

Arrest for debt is an occurrence familiar to readers of English Novels. Many heroes and heroines suffered such a fate, but very few villains. It is clear from Pickwick Papers, Vanity Fair and The Vicar of Wakefield, to cite a few examples, that imprisonment for debt had no moral stigma. Because in normal

91 Cf. W. Clay, passim; Webb, p. 192.

life it was impossible to avoid incurring debts, and because a variety of unfortunate circumstances might make it impossible to repay them, the insolvent man was exculpated. He might be unwise or gullible, but never criminal. Sympathy was accorded to the debtor, but none was spared for the creditor. At best vindictive or choleric, as portrayed in Roderick Random, he might at worst be a villain. In a novel, the villain could contrive to thrust heroes like Dr Primrose or Mr Pickwick into the debtor gaol on an unjust pretext, at the nadir of the plot.

The device is frequent in novels, and indicates the widespread fear of arrest that existed.⁹² It seems that many literary men, like Smollett and Dr Johnson, learnt about the debtor gaol from first-hand experience. Quite a part of the literature of the period was written in King's Bench prison,⁹³ and William Combe edited The Times while confined in the Rules of that same establishment.⁹⁴ Charles Dickens spent the twelfth year of his life on the debtor's side of Newgate, while his father was under arrest for debt, and the experience had a profound influence on his later concerns.⁹⁵ In Dickens' novels, prisons often are described, and they become a symbol of the restrictions of society in his later works. This

92 Chandler, The Literature of Roguery, is a useful work for tracing such references.

93 W. Dixon, The London Prisons, p. 120ff.

94 H. Hamilton, p. 218.

95 Cf. P. Collins, Dickens and Crime, p. 14; A. Trumble, In Jail with Charles Dickens.

image of imprisonment for debt coloured the attitudes of his readers.

Writers often described the poverty and want associated with insolvency. This is particularly noticeable in eighteenth century works. One writer noted that although many debtors lived at ease in prison, subsidised by friends, it cost about twelve shillings a week to live in the Fleet. Consequently: "the great bulk [of prisoners] live extremely hard, and seldom know what it is to have a good dinner".⁹⁶

Roderick Random noticed "a number of naked wretches assembled together"⁹⁷ on the poor side of the Marshalsea, whose only entertainment came from sermons expounded by an insolvent preacher. Mr Pickwick did catch sight of "wretched dungeons" in the Fleet,⁹⁸ but nineteenth century humanitarians had done much to eliminate the worst of the sufferings. The death rate of prisoners dramatically declined after food and medical aid was provided. In 1813, the Evangelical, Henry Thornton, sponsored a bill to relieve the plight of poor prisoners in London,⁹⁹ and a series of Select Committees later scrutinised conditions. Indeed, a later writer felt that one of the ironies of the whole principle of imprisonment for debt was that:

96 Debtor and Creditor's Assistant, p. 45.

97 Smollett, Roderick Random, p. 369.

98 Dickens, Pickwick Papers, p. 583.

99 53 Geo. III c. 113.

here board and lodging is forced down your throat because you do not pay for it. Unparalleled generosity! And all this for presuming to be so miserably poor! Just retribution!¹⁰⁰

Money was inevitably an important part of the life of the prison. To Mr Pickwick it was an amazing discovery that:

money was, in the Fleet, just what money was out of it; that it would instantly procure him almost anything he desired; and that, supposing he had it, and had no objection to spend it, if he only signified his wish to have a room for himself, he might take possession of one, furnished and fitted to boot, in half an hour's time ¹⁰¹

By law the creditor could not touch this money, and often, threatened with arrest, the debtor preferred to save what he had to meet the expenses of prison, rather than attempt to appease his creditors. Naturally, the creditor disliked this, but most observers seem to have sympathised with the debtor. The insolvent man needed a refuge, and like Little Dorrit, often found that in the prison:

We are quiet here; we don't get badgered here; there's no knocker here, sir, to be hammered at by creditors ... Nobody writes threatening letters about money in this place,¹⁰²

was her comment. The imprisoned debtor's only fear was that he would run out of money, and be moved to the Common Side. "To want money in a prison", one novelist wrote, "precludes every idea of comfort or

100 "Imprisonment for Debt, A True Story", Metropolitan Magazine, x. (1834). 140.

101 Dickens, Pickwick Papers, p. 603.

102 Dickens, Little Dorrit, p. 71.

accommodation; for in such a place there is no credit."¹⁰³

Consequently prison society reproduced the divisions of the outside world, except that wealth was more significant in determining one's "place", than it was elsewhere. The rich, like Mr Pickwick, lived in the attics of the prison, attended by their servants. The poor lived in the Common Side basement. Nevertheless there was a bonhomie which bound the prisoners into a fellowship.¹⁰⁴ The "garnish", which every new inmate paid to enable the other prisoners to celebrate his arrival, was a symbol of this. A poem called "The Humours of the Fleet" memorably described the new debtor's reception:

Welcome, welcome, brother debtor
To this poor but merry place,
Where there's neither bum nor bailiff
Dares to show his frightful face.
Ne'er repine at your confinement
From your children and your wife,
Wisdom lies in true resignation
Through the various scenes of life ...
But, kind sir, as you're a stranger,
Down your garnish you must lay,
Or your coat will be in danger,
You must strip or pay.¹⁰⁵

And even poor Dr Primrose financed a drunken party for his fellow prisoners.¹⁰⁶

Debtors spared no sympathy for their creditors. Rather, it was felt morally justifiable to make trouble for the man responsible for one's imprisonment. Pamphlets were circulated in the prisons, suggesting

103 Metropolitan Magazine, x. (1834). 36.

104 Ibid., ix. (1834). 25.

105 Quoted by J. Ashton, pp. 283-295.

106 Goldsmith, p. 164.

legal proceedings, which, if commenced, would cost the creditor hundreds of pounds to defend, at a trifling expense to the debtor. Such a pamphlet fell into the hands of Sir Samuel Romilly in 1816, and he quoted it to the house, as epitomizing all the evil of the existing law.¹⁰⁷ In prison large debts became a kind of status symbol. No longer did the debtor try to pay them. Smollett noted that in the Fleet:

No man scrupled to own the nature of the debt for which he was confined, unless it happened to be some piddling affair; but on the contrary, boasted of the importance of the sum as a circumstance that implied his having been a person of consequence in life.¹⁰⁸

In the nineteenth century, debtors as a whole agitated for a change in the laws of debt. Mr Micawber was not the only one who drafted a petition to Parliament.¹⁰⁹ It seems that prisoners kept a close watch on parliamentary discussion of their plight,¹¹⁰ and on at least one occasion in the eighteenth century, they burnt an effigy of a prominent opponent of the passage of a temporary insolvent bill.¹¹¹

If the public agreed about one feature of the environment of the debtor prison, that was its corrupting

107 Memoirs of Sir Samuel Romilly, iii. 289-290. Cf. J. Wade, The Extraordinary Black Book, pp. 264-5; PP, 1816, (472). iv. 44/388.

108 Smollett, Peregrine Pickle, p. 529.

109 Dickens, David Copperfield, pp. 184-5.

110 Metropolitan Magazine, x. (1834). 139; ibid, xi. (1835). 111.

111 GM, lv. (1785). 663.

influence. Of those unfortunate persons who entered its precincts, some left with criminal intentions, and all left with shattered morale. The serialised novel, "Imprisonment for Debt, a True Story", told the harrowing tale of faithful Edward, who in prison became incontinent and a swindler. The writer concluded that the prison was a seminary for wickedness. "No person," he declared, "is ever the better for having been in a prison, but too frequently the worse".¹¹² The Fleet prison was known as the largest brothel in Europe.¹¹³ It was little wonder that creditors assumed that most of their debtors were fraudulent, when they were confined in such company.

Life in a debtor prison was often an unsavoury experience, yet it was scarcely the punishment that creditors wanted it to be. For most prisoners, it was unpleasant and uncomfortable, but those very debtors arrested by their creditors because they did not have the where-withal to pay, were the ones who could afford to live in luxury in prison. If loss of liberty was not feared, (and the very wealthy prisoners had no need to fear this, for they could live in the Rules), then only the threat of imprisonment, and not its occurrence, aided the creditor. Publicity about prison conditions therefore nourished demands to change the law.

112 Metropolitan Magazine, ix. (1834). 214.

113 Westminster Review, ix. (1828). 67.

The period saw a dramatic increase in committals for debt. Traders were becoming more litigious, and the prisons more crowded, and thus prison conditions worse. The static picture of the debtor's lot, which has been described here, minimises changes that were certainly occurring. Reform, however, came not as a result of a change in the conditions, but as a result of a changed attitude by observers to the unchanged problems.

CHAPTER III

THE LAW ON TRIAL

On 19 November 1770, James Stephens, a debtor in the King's Bench prison, was called before the Judges of the King's Bench, including the distinguished Lord Mansfield. He had written a pamphlet entitled Considerations on Imprisonment for Debt; fully proving that the confining of the bodies of debtors is contrary to Common Law, Magna Charta, Statute Law, Justice, Humanity and Policy etc.,¹ and the Bench wanted to hear his arguments. They were very radical. Stephens had written that the law was a "confused unintelligible ... jumble of words."² In court he expounded his views for half an hour, and "insisted on his releasement, which he urged was no more than his right."³ The court was disinclined to agree, and Mansfield remanded him back to the gaol, stating that there was no other legal alternative. Stephens left with a threat on his lips, that the prisoners would "do themselves justice."⁴

And this message he carried back to prison. There he opened the prison gates, and invited any who were willing to claim their rights, to leave the prison and to accompany him to higher courts in search of

1 B.M. 518. h. (4). I have not had access to this pamphlet.

2 Quoted by Barrister-at-law, The Rise and Practice of Imprisonment, p. 34.

3 AR, xiii. (1770). 164.

4 LM, xxxix. (1770). 593.

justice. Six prisoners were persuaded to leave, but they were not so interested in the verdict of the courts. When Stephens voluntarily surrendered himself to the Marshal later that evening, he had learnt that not all debtors had the same faith in the principles of English Law that he had.⁵

In their trial for escaping from lawful custody, which took place on 31 January 1771, Stephens, along with Robert Leslie, William Thompson, J. Biggs and John Mein, - (perhaps the other two had not been recaptured), - heard a much clearer defence of imprisonment for debt by the Court. The judge declared that:

To doubt the equity of such a thing now ... after a practice of four hundred years, would be preposterous, and what none but madmen could think of; however men ought to be tender of the natural and personal liberty of their fellow creatures.⁶

And there the matter rested. It was not thought worthy of record by any of the Law Reporters, and Parliament seems to have taken cognizance of the incident only in the addition of a clause to the next insolvent act, which indemnified the Marshal of the prison from liability for the debts of those who had escaped.⁷ Yet it was a symbolic incident, marking the beginning of a radical movement which attacked the whole practice of imprisonment for debt. Widely reported as the incident was, it also inspired others to adopt and

5 Barrister-at-law, p. 101.

6 GM, xli. (1771). 90.

7 12 Geo. III. c. 23, s. lviii.

extend Stephens' arguments. The first such pamphlet appeared in 1772, and others swiftly followed. Demand for reform would shortly be familiar.

The timing and themes of this demand were significant. As revolutionary ideas began to be propagated in Europe and America, in England the debtor laws were attacked as a threat to civil liberty and the constitution. Did this part of the English campaign for reform of the law draw its inspiration from the intellectual forces that advocated revolution elsewhere in Europe, or was the campaign based on more traditional grounds? It is significant that in the year 1772 a philanthropic Society was set up to aid the debtors, and this must have been linked with dissatisfaction with the practice. This chapter plots the relationship of philanthropy and reform.

THE THATCHED HOUSE SOCIETY

By the second half of the eighteenth century, many legacies existed for the relief of debtors. Most of these were for the benefit of specific gaols or counties. For example, James Neild recorded the existence of Pemberton's Charity, for the relief of the poor in Suffolk gaols, and the gift of Dr Hartwell's estate to relieve the debtors of Durham.⁸ Frequently such legacies were badly administered, or had even been mislaid in the passage of time. It was typical of

8 Account of the Society, pp. 117, 176-7.

philanthropists in the latter half of the eighteenth century, that they should seek better organisation and definition to this charity. Moreover religious compassion which was the primary motive for this philanthropy was reawakened in the period.

A proposal made in 1764 illustrates both the religious motivation and organisational aspects of this philanthropy. In the pages of the London Magazine, a scheme was outlined that year for the formation of societies to relieve debtors. They should raise a large capital by subscription, and invest it, so that the interest could be used to release debtors by paying their debts. Blind and deformed debtors, and those with large families were to be especially eligible for relief. Each such society should employ a Secretary, a Treasurer and a Broker. The scheme was recommended by the common late-eighteenth century themes of "improvement" and "social duty". The right to imprison for debts was not questioned, but the rich were declared to have a responsibility to help the poor, including those of the poor who:

suffer as much cold, hunger and
thirst [as others], and who yet
are detained by locks and bolts
from asking casual relief from
instant want.⁹

Humanity, Christian compassion and social responsibility endorsed the proposal; so also did Mercantilist concern at the loss of the earnings of idle debtors. The

9 "A Humane and Public-spirited Proposal", LM, xxxiii. (1764). 14.

proposal nicely combined Christian and social duty with Protestant fervour. In Papist countries, even "delicate ladies" visited prisons, and so, "let us shun their superstitions but let us imitate their christianity." In particular their Religious Orders and Brotherhoods should be imitated by English Societies relieving debtors. Each local Society should be called a "Brotherhood of Redemption", which neatly suggested imitation of the organisation of such Papist bodies, while it cast Protestant scorn on Papist theology. Such Brotherhoods and Sisterhoods too could be formed in many places throughout England.¹⁰

The scheme did not eventuate. Two correspondents to the magazine pointed out that legacies to help debtors already existed, but that if they were very common, every creditor would send his debtors to gaol.¹¹ The proposal was typical of "an age when humanity is in fashion";¹² an age which did see the formation of a wide variety of philanthropic organisations. It is also noteworthy that when a Society to relieve debtors was founded, it was almost identical in structure and conception to the Brotherhoods.

There was no feeling that such a body was urgently needed. The next occasion when a relief fund for small debtors was suggested was in 1772, in the translator's preface to an Italian work condemning cruelty

¹⁰ Ibid, p. 15.

¹¹ Ibid, p. 188.

¹² Sir John Hawkins, quoted by A. Briggs, The Age of Improvement, p. 13.

to debtors.¹³ And perhaps that translator already knew of proposals that were voiced that year to set up such a fund. For on 23 February 1772, Rev. Dr. William Dodd had preached a sermon on the sufferings of debtors in the fashionable Charlotte Street Chapel, Pimlico, and also in the Bedford Chapel, Bloomsbury. Dodd was a celebrated preacher of his day who achieved notoriety in 1777 when he was hung for forging bills of exchange in the name of the Earl of Chesterfield. In the trial, the Treasurer of the Society was called to give evidence and identify Dodd's writing,¹⁴ but the Society later tried to hide Dodd's association with it.¹⁵ However it was his eloquent description of the misery of debtors that was the catalyst to the formation of the Society, for it inspired a collection of £81.1.0 for their relief.¹⁶

The sermon aroused public comment, and a number of gentlemen formed themselves into a Committee, to distribute the money that had been collected. Among these gentlemen were Rev. Weeden Butler, Dodd's assistant, and later his successor at Charlotte Street,¹⁷ and James Neild, a prospering jeweller in St. James St. The members of the Committee visited several London gaols, and became aware of the "wretchedness" there,

13 Imprisonment for Debt Considered ... Translated from the Italian, preface, [p. viii].

14 AR, xx. (1777). 232-4.

15 The only mention of his name is in T. Francklin, A Sermon Preached at the Chapel, (1774), p. 13.

16 Account of the Society, pp. 13-14.

17 Ibid, p. 566; DNB, iii. 541.

and of the immense task facing any who wanted to improve conditions. They applied their first £80 to releasing thirty-four prisoners who had large families.¹⁸

Further money was sought by advertisement, and by the end of the year, £939.17.9 had been received, including a donation of £100 from the Earl of Godolphin.¹⁹

The committee was encouraged by this benevolence, and they set themselves the goal, "under the blessing of providence, of making it prosperous, and adding to it dignity, stability and success".²⁰ On 5 May 1773, "a numerous and respectable meeting of the subscribers, benefactors and friends" gathered in the Thatched House Tavern, St. James St, a popular meeting place, and adopted a Constitution for the Society, electing Lord Romney as its President. The support of the "noblemen and gentlemen present" was very important to the prosperity of the Society.²¹ One week later the general account of the Society totalled:

Benefactions to this day	£2922.11.10
Disbursement to discharge	
986 prisoners	<u>2892.19. 4</u>
	£29.12. 6

These 986 prisoners had between them 566 wives and 2389 children. Manufacturers, seamen, and labourers

18 Account of the Society, pp. 14-15; "Memoir of J. Neild, Esq., written by himself", in T. Pettigrew, Memoirs of J.C. Lettsom, ii. 191ff, reprinted in GM, lxxxvii. (1817). 1. 307.

19 Francklin, p. 13; Account of the Society, p. 15.

20 Ibid, p. 17.

21 AR, xvi. (1773). 99. Cf. Wheatley, London Past and Present, iii. 370.

were among those released.²²

The tone of the Society for the Relief and Discharge of Persons Imprisoned for Small Debts was thus clearly delineated, as was the thoroughness of its accounting. Statistics were thereafter a regular feature of the quarterly meetings of the Society, and these statistics were also widely publicised.²³ The Society was soon one of the approved London charities. It also gradually extended its work into county prisons, though it was never so effective there. It encouraged the formation of similar societies in other towns, and John Howard recorded the existence of such in Bristol and Dublin.²⁴

The Rules of the Thatched House Society, as it was commonly called, permitted the committee of the Society to spend up to £10 to release any debtor by paying part or all of his debts and gaol fees. Preference was given to the aged and infirm and those with large families. Debtors had to complete an application form which was available from gaolers, and send it post paid to the Society's offices, which for most of its life were at No. 7 Craven Street. The application had to name two housekeepers as referees, for the Society was assiduous in ensuring that only debtors of good character were relieved by it.²⁵

22 Account of the Society, pp. 15-16.

23 E.g. AR, xvi. (1773). 126; ibid, xix. (1776). 141.

24 State of the Prisons, p.18; Account of the Society, p. 60.

25 Ibid, pp. 49-57.

This note of moral propriety was pursued with the caution of good businessmen. The Society also preserved its image by carefully chosen officers. The first President, Baron, and later First Earl Romney of Kent, was a devout man, zealous in metropolitan philanthropy. He was a notable colonel in the West Kent Militia from 1759, and was the first President of the Marine Society. (This Society aimed to apprentice all boys discharged from the Royal Navy into the Mercantile Marine, or some trade.) Until his death he served as President of the Thatched House Society, and after his death in 1793, his son and heir succeeded to the position. This second Earl was a more prominent politician; he had been a Whig in the Commons, where he held a seat for Kent, but in the Lords he was a Tory. Lord Lieutenant of Kent for eleven years, he was in 1801 created Viscount Marsham.²⁶

The original Vice Presidents of the Society were more prominent men than the President, but none of them sat with the Peers. One was Sir Sidney Smythe, a Puisne Baron in the Court of Exchequer, and a very noted Evangelical.²⁷ Indeed evangelical blood ran thick in the Society, for another Vice President was the wealthy banker and philanthropist, John Thornton, the father of Henry Thornton.²⁸ The other two Vice-Presidents were responsible for some insolvency legisla-

²⁶ GEC, xi. 85.

²⁷ Francklin, p. 1. DNB, xviii. 606-7.

²⁸ E.M. Howse, Saints in Politics, p. 125.

tion in the House in the seventeen seventies. Lord Beauchamp attempted to fundamentally reform the debtor laws in 1780. Nares was also a distinguished Judge of Common Pleas.²⁹

In 1808, Beauchamp, now the Marquess of Hertford, was still among the Vice Presidents. His colleagues were now the Earl of Radnor, a Tory; Philip Pusey, Radnor's son; and Charles Middleton, (Baron Barham), a very distinguished naval administrator, who served as First Lord of the Admiralty in 1805-6, and was a notable Evangelical.³⁰

The Society therefore had the "dignity" it sought, and it also received support from a wide spectrum of the community. Released debtors were encouraged to give to it,³¹ and so also were Members of Parliament. In the published lists of benefactors, the names of contributing Peers were placed at the head of the appropriate alphabetical sections, but all other names were mingled without regard to persons. The Society listed the names of the smallest contribution, and meanest contributor. Thus although the bulk of named contributions were from gentry, (and a high proportion of donations were anonymous), many others contributed, as is revealed by the following analysis:

29 DNB, xiv. 91-2; GEC, vi. 511.

30 GEC, x. 718-9; ibid, i. 423-4; DNB, xvi. 504.

31 Exhortation to the Debtor Released, (1780), pp. 11-12.

TABLE FOURTHATCHED HOUSE SOCIETY SUPPORTERS ³²

Lords and Baronets	29	9.8%
M.Ps. (identified)	7	2.4
Clergy	16	5.4
Doctors, Army, Navy	10	3.4
Gentry (Esq.)	138	46.7
'Mr'	40	13.6
Pseudonymous	<u>55</u>	<u>18.7</u>
	295	100.0

In all the Society was supported by thirty-two Peers, including the Duke of Gloucester, reformers like Stanhope and Howard, but none of the leading Tories. Reformers and radicals supported it, including Patrick Colquhoun the statistician, Dr J.C. Lettsom the Quaker guardian of the poor, and Horne Tooke. Also very noticeable were the Evangelicals, including Thomas Raikes, George Vansittart, Henry Thornton, Hannah More (who also left a legacy of £100 to the Bristol Debtor Society), and William Wilberforce. Lesser men like Mr Trueman, the godly shopkeeper in Hannah More's story, were no less interested.³³ The Society stood for the traditional values of benevolent charity, but it also had the support of those who desired reform, and especially of those who preached evangelical religion.

The first Secretary of the Society was L.D. Nelme, and in 1786 he was succeeded in this menial position by Richard Grasswell.³⁴ The Treasurer, from 1774, after a

32 Account of the Society, pp. 582-594. Sample: A-G. (Approx. 50%.) The list omitted donations under £10 from deceased persons.

33 H. More, Works, i. pt. ii. 9. E.M. Howse, p. 125.

34 Francklin, (p.1.); PP, 1792, Report no. 97, p. 26.

period of confusion, was James Neild who also served as auditor, historian, visitor, publicist and stalwart of the Society, until his death in 1814.³⁵ Indeed, he dominated it.

Neild was born on 24 May 1744, at Knutsford in Cheshire. His mother was a linen draper, but he was apprenticed to a London jeweller, at the instigation of his wealthy farmer uncle. He was also trained by the King's goldsmith for a time, but earned renown as a jeweller. A jeweller's shop was a meeting place for the rich and the great, and Neild was so skilled that when he inherited his uncle's wealth, he was able to open his own shop in St. James Street, and attract many clients of his old master to it.³⁶

Neild made his fortune as a jeweller. He retired in 1792, and when he died in 1814, left an estate of £250,000 to his son John Camden Neild, famous to Victorians as an eccentric miser. Neild's other son was maltreated, and he fled from the family's Chelsea home to the West Indies.³⁷

Neild pursued his interest in debtors especially after his retirement, and gained considerable fame thereby.

35 GM, lxxxvii. (1817). pt i. 307.

36 Ibid, pp. 305-7; DNB, xiv. 169-170.

37 DNB, xiv. 170-1. The DNB writer, aware of Neild's imitation of John Howard, compares the two philanthropists in their treatment of their sons. But in fact Howard ignored, but did not maltreat his child. Cf. M. Southwood, John Howard Prison Reformer, passim.

A Justice of the Peace in Middlesex, Kent, and Westminster, he was also in 1804 High Sheriff of Buckinghamshire, at the instigation of the Marquis of Buckingham.³⁸ But his visitation of prisoners had begun in more humble days, when he visited a fellow apprentice who was held in King's Bench prison in 1762. Neild later recalled that on this occasion:

There appeared nothing of what I conceived to be a prison except the door of admission and high walls ... I had never before seen such a number of profligates and prostitutes unabashed, without fears, without blushes. I thought, to be sure, all the wicked people in London had got together there. With this impression I hastened to his mother's, ... and told her to get him out directly, or he would be lost - he would be ruined for ever.³⁹

Neild's fears proved justified, and this led him to examine other gaols. When he visited France in 1770, he sought to inspect the prison dungeons there. The formation of the Thatched House Society gave him a reason for his visits, which took him on several European tours, and in 1781 caused him to contract the dreaded gaol fever.⁴⁰

In later life, Neild much admired his fellow Dissenter⁴¹ John Howard, and his friends frequently

38 Edinburgh Review, xxii. (1814). 390-1.

39 GM, lxxxvii. (1817). pt. i. 306.

40 Ibid, 307-8; Ibid, lxxv. pt. i. 99. Webb, pp. 66-7.

41 [?] J. A. Babington, The English Bastille, p. 167, calls Neild a Quaker, but this is dubious.

compared the two men. Yet his work and the foundation of the Society antedated the publication of Howard's great study in 1777 by five years. James Neild was a member of the commercial part of society, and his sympathy for the debtor is surprising in some ways. In part he saw the Society as a benefit for the creditor also. In a note to the 1774 accounts, he commented:

5814 Souls benefited; Besides the Advantage derived from this charity by the several Creditors, many of whom were in very necessitous Circumstances.⁴²

However in the literature of the Society, the creditor was usually described in less sympathetic terms. Jewellers were an élite among traders, and they could afford sympathy for small debtors.

The work of the Society was primarily the release of prisoners for small debts. Over the years 1772-1808, 29,094 prisoners were released, at a cost of £66,015.7.7.⁴³ Over this period, the Society never released less than three hundred debtors a year, even when a temporary Insolvent Act released most of the prisoners.

⁴² Francklin, p. 15.

⁴³ Account of the Society, pp. 595-6. See Table Five.

TABLE FIVEDEBTORS DISCHARGED BY THE THATCHED HOUSE
SOCIETY, 1772-1808 ⁴⁴

	<u>Year</u>	<u>Number Discharged</u>	<u>Cost</u>
(To 30 March)	1772	34	£81. 1. 0
	1773	854	2569.18. 7
	1774	838	1871.17. 6
	1775	996	1724. 1.11
	1776	673	1842.13. 3
	1777	877	1729.19. 7
	1778	779	1764. 0.11
	1779	811	1611.15. 3
	1780	628	1288.17. 1
	1781	321	828.15. 9
	1782	389	935. 3. 9
	1783	547	1121.12. 0
	1784	535	996.12. 3
	1785	463	904. 9. 1
	1786	339	715. 8. 9
	1787	343	749. 0.10
	1788	710	1568. 4. 2
	1789	612	1926. 3. 4
	1790	798	2303. 9. 4
	1791	666	1777. 0. 6
	1792	460	1297.14. 7
	1793	568	1870. 1. 5
	1794	540	1844.14.10
	1795	434	1436. 6. 1
	1796	481	1756. 0. 5
	1797	490	1606.15. 0
	1798	645	2001.13. 6
	1799	578	1553.14. 5
	1800	648	2106.16.10
	1801	885	2870. 4. 4
	1802	1125	2607.11. 1
	1803	927	2892.14. 0
	1804	916	2586. 2. 1
	1805	794	2707. 8. 3
	1806	657	2283.10. 6
	1807	839	2817. 9. 1
	1808	848	3395.17. 5

These debtors had between them, 55,241 wives and children, so in all 79,335 persons were helped, at a cost of £2.14.11 per debtor. Thus the Society made a substantial contribution to the reduction of the gaol population, freeing about ten per cent of the debtors committed every year.

⁴⁴ Ibid, pp. 595-6; Francklin, pp. 13-14.

The function of the Thatched House Society was primarily remedial rather than political. It aimed to help the debtor to leave prison, rather than prevent his committal. Was this its only aim? Edward Farley, a bitter opponent of the debtor laws, commented that the Society had published dreadful accounts of the evils of imprisonment for debt, which were surely an argument for abolition, "instead of which they aim at qualifying it."⁴⁵ Even this hard remark betrays the existence of some political aims. The Society regularly published alarming tales of unjust imprisonment. The Secretary was "prepared to have stated many instances"⁴⁶ to the 1792 Parliamentary Committee of cases where only inability to pay the gaol fees had kept the prisoner behind the bars. Creditors simply abandoned their debtors in gaol, and ceased trying to recover the debt. In few cases did the Society ever have to pay more than the creditors' legal costs.⁴⁷

These distressing facts were regularly quoted by reformers, and there is no doubt that the Committee of the Society regarded the current practice as scandalous. Thomas Francklin, in a sermon preached in 1774 for the benefit of the Society, commented on the injustice of a law which threw innocent as well as guilty into "the cruel confinement of a loathsome dungeon". He blamed "the cruel and unfeeling disposition of their merciless creditors,"⁴⁸ for the debtors' dilemma, and desired

⁴⁵ Farley, p. 139.

⁴⁶ PP, 1792, Report no. 97., p. 27.

⁴⁷ Ibid, p. 27.

⁴⁸ Francklin, pp. 3, 8.

amendment of the law. Francklin admitted that some felt that the Society's benevolence had worsened commercial morality, by encouraging men to be careless about repaying their debts, but he felt that the careful investigations made into applicants resulted in only honest debtors being helped.⁴⁹

The Society believed that the honest man had a right to civil liberty, even if he could not pay his debts. The debtor was informed that the Society: "have opened to you the prison gates and given you again ... that most desirable ... LIBERTY".⁵⁰ Neild in his Account of the ... Society advocated certain specific reforms of the debtor laws. He proposed the total abolition of gaol fees and room rents. Instead, a weekly allowance should be paid to all paupers in prison, and medical treatment be provided.⁵¹ These were urgent necessities while the law of arrest continued. But that law of arrest was the real basis of the problem. The existing law was unfair: "Does even the fraudulent debtor merit this perpetual, undefined punishment?"⁵² asked Neild. The law was also ineffective. As he told the House of Lords' Committee in 1809:

I think [the effects of the law] are big with evil ... the whole of the Money seems to be absorbed in Law Expenses; there is scarcely, I believe, One Creditor in Ten [who] receives One Shilling of Debt above Costs.⁵³

49 Ibid., pp. 3, 7-8, 11.

50 An Exhortation to the Debtor Released, p. 5.

51 Op. cit., pp. 571-3.

52 Ibid., p. 24.

53 Journals of the House of Lords, (1809), p. 191.

He did not seek the total abolition of imprisonment for the fraudulent, but felt that this should be for a limited period, proportionate to the debt. Arrest should be allowed for debts over £30, but the person arrested should be summarily discharged unless the creditor could argue that the debtor had been fraudulent.⁵⁴

The Society was not the kind of body to campaign for total abolition of arrest. But they seem to have sought for and supported modifications in the law. In 1785 it was a Report and plea by the Society that led to a restriction on the duration of imprisonment imposed by the Courts of Requests.⁵⁵ The impetus for undertaking this task was never left open to uncertainty. The Society was inspired by "Christian Philanthropy."⁵⁶ When Thomas Francklin, the Queen's Chaplain, preached his sermon for the benefit of the Society in 1774, his aptly chosen text was from the Gospel of Matthew, chapter eighteen. It was the parable of the forgiven man who failed to forgive his debtor. Such was the appeal to religious duty.⁵⁷

But what species of religious philanthropy was it? As has already been shown, the Society was strongly supported by Evangelicals. Ford K. Brown, in his curious study of the Evangelical Party, goes further than this, and describes the Society as founded

⁵⁴ Account of the Society, pp. 34-9, 575-80.

⁵⁵ Ibid, pp. 550-560.

⁵⁶ Ibid, p. 45.

⁵⁷ Francklin, pp. 1-2.

by the Party, and by 1808 deserted by it, because the Society had become too "genuinely philanthropic".⁵⁸ This is a perverse portrait of the Society, which ignores the fact that the dissolute Beauchamp, who was no Evangelical, was among the founders, and that in Neild's Account of the Society, written in 1808, he wrote that it was based on "the benevolent principles of genuine Christianity."⁵⁹ In actual fact the Society was an organisation of all those who were concerned at the effect of the debtor laws. Not least among them were the Evangelicals, who were influenced by Wilberforce's conviction "that by regulating external conduct ... the hearts of men ... are ultimately wrought upon."⁶⁰ The evangelical note influenced the publications of the Society. In the tract given to the debtor when released by the Society, he was exhorted to give thanks to God, for which purpose a lengthy prayer was printed. He was exhorted to "Sin no more", should he realise that extravagance or dissipation led to his arrest. In the future he was urged to live carefully; to practise "INDUSTRY" and also "the strictest SOBRIETY". It is not only his behaviour that should be reformed, however, for the Society is said to desire not only his redemption from prison, but also from hell, which is "an eternal prison".⁶¹ The evangelical message of the tract is

58 Brown, Fathers of the Victorians, pp. 349-50.

59 Op. Cit., p. 599.

60 Quoted by A. Briggs, p. 72.

61 Exhortation to the Debtor Released, pp. 7, 9, 10.

explained by its author. If that was the Rev. John Fletcher of Madeley, as a pencil inscription in the copy held in the British Museum suggests, it was written by one of the most influential and saintly of the early Anglican admirers of Wesley.⁶²

The Society was a prestigious body, highly regarded by reformers, aristocrats and evangelicals. But was it a cause or a result of discontent with the debtor laws, and was it important in the campaign? To this question we now turn.

INFLUENTIAL VOICES

It is necessary to trace the origin of the demand for a new law. One factor certainly must have been better knowledge of what the debtors endured. But was it also related to the Enlightenment, which critically examined social customs in the light of the laws of Reason?

Montesquieu in his magnum opus written in 1748, De L'Esprit des Lois, described the Roman and Greek forms of government, and attempted to analyse the scientific basis of law. In Book Twelve he devoted a chapter to the cruelty of debtor laws in Rome and Greece. "Often did those cruel laws against debtors throw the Roman republic into danger",⁶³ he wrote. Consequently the later development of the Roman Empire saw a relaxation in the debtor laws. Montesquieu's discussion of civil liberty must have been noted, when

62 B.M. 4403. c. 19, (p.1). Cf. DNB, vii. 312-4.

63 Op.cit., i. 202.

his description of English political liberty was so well known.

The first Philosophe to turn his attention to the theory of punishment was Beccaria, who published his Dei delitti e delle pene in 1763. By 1767 it had been published in English, and Beccaria was soon a celebrity throughout Europe. Chapter Thirty-two of Beccaria's work dealt with debtors. However, not until the third edition, which was translated into English in 1770, did Beccaria propose the abolition of imprisonment for honest insolvent debtors. He wrote:

In earlier editions of this work ... I said that the innocent bankrupt should be kept in prison in pledge of his debts or be made to work like a slave for his creditors. I am ashamed of having written in such a way ... I offended against the rights of man, and nobody complained.⁶⁴

Now Beccaria castigated the rich and greedy for instituting laws that were only for their private benefit, rather than for the public good. The fraudulent debtor should, he agreed, be charged with forgery; to punish other debtors was "barbarous reason".⁶⁵

Beccaria's opinion seems to have carried some weight, for in 1772 a small pamphlet was published in London, translated from Italian. The translator tentatively attributed the work to Beccaria, though this is unlikely to have been correct.⁶⁶ There was

⁶⁴ A. Manzoni, The Column of Punishment, prefaced by Cesare Beccaria's Of Crimes and Punishments, p. 75.

⁶⁵ Cf. C. Phillipson, Three Criminal Law Reformers, p. 66.

⁶⁶ Imprisonment for Debt considered ... Translated from the Italian, preface, (pp. xi-xii).

certainly little besides their alleged author to commend the arguments of the pamphlet. It declared that the debtor was the very opposite of an offender, for he restored to society the money that the creditor had been hoarding! Thus Liberty, Reason, and the Prosperity of the State all supported reform. The pamphlet was at least accurate in placing Beccaria on the side of the reformers, a fact which John Howard mentioned also.⁶⁷

The opinions of the philosophes were not unremarked in England. However the opinions of Englishmen like Samuel Johnson and John Howard were far more influential. Johnson's condemnation of the law became legendary over the next fifty years. He had brought prison conditions into the open. This was one of the lesser achievements of Johnson, but it became the single task of that remarkable man, John Howard. Howard did not publish comments on the laws that put men in prison, but his exposure of the hidden world of English gaols was used by others to support their attempts at reform. Howard wrote about the conditions of both debtors and felons, but he stressed the sufferings of poor debtors, and also emphasised that the likelihood of disease in gaols was greatly increased by the way they were crowded with the families of debtors.⁶⁸ In his descriptions of foreign prisons, their treatment of debtors was carefully noted. In France, Portugal, and Russia, he

67 Ibid, pp. 18-19; State of the Prisons, p. 85.

68 State of the Prisons, p. 17.

observed limitations on the right of civil arrest. The Paris Parlement often intervened to protect the debtor, and force the creditor to accept a low composition. In Holland he found few debtors in the prisons, and he commented that there:

You do not hear in the streets as you pass by a prison, what I have been rallied for abroad, the cry of poor hungry starving debtors.⁶⁹

Although Howard urged reform of the regulations governing debtors in prison, he did not publish any condemnation of civil arrest. In his private correspondence, however, he wrote:

I heartily wish that such an alteration were made in our laws with respect to confinement for debt, that none should undergo it, but dishonest and fraudulent debtors. Such are criminals and ought to be treated accordingly.⁷⁰

This opinion was not public knowledge, but others read his volumes, and reached similar conclusions. Howard's work directly resulted in new laws on gaol supervision. More important, by creating for the first time public sympathy for debtors, he provided the necessary climate for reform. The Thatched House Society preceded him, but Howard attracted public attention to its work, and himself left money to it.⁷¹ His contribution had more influence than that of Beccaria or Montesquieu ever had. And the theoretical basis for reform was largely the work of another Englishman, Jeremy Bentham.

69 Ibid, p. 45. Cf. J. Howard, Lazarettos, p. 72.

70 J. Field, Life of John Howard, p. 162.
Cf. Southwood, p. 121.

71 Account of the Society, p. 589.

THE RADICALISATION OF COMPASSION

Howard turned the compassion of many people into new paths, but the wave of compassion itself was rooted in the greater movements of the age. A profound change of attitude was taking place. As Lord Mansfield said, "A mistaken compassion had of late years got such possession of the minds of men."⁷² He noticed it in attitudes to the debtor laws, although it was true in other areas of public social concern. By the year 1800 the debtor laws were almost universally regarded as bad. This was compassion of a kind that challenged the law. The development of this new type of compassion is worth tracing. It is reflected in a growing literature, which seems to have been widely read, for the pamphleteers were aware of each other's arguments. Increasingly authors tended to advance specific proposals for reform, and they appear to better understand the legal issue. Potentially much of the criticism of the debtor laws verged on a radical verdict upon the entire constitutional structure of Britain.

James Stephens, the King's Bench prisoner, had reached such conclusions in his pseudo-legal arguments. He wanted to overturn the traditions of Common Law and revive Magna Carta. Thomas Haillie Delamayne revised these legal arguments in a pseudonymous work published in 1772. He feared lest Stephens' "rapidity of temper" prejudice the case for reform. After a long and technical study, he triumphantly concluded that

72 PH, xxii. 628.

"statutes are the great victors for the debtor."⁷³ He realised that the "barbarous" practice was firmly accepted by the Courts, so his solution was less simplistic than that of Stephens. Let the fieri facias be restored as the execution for non-payment of debts, and imprison only the fraudulent, he proposed. Parliament should pass a permanent Insolvent Act to accomplish this. To encourage Parliament, Delamayne made his plea:

We have drawn the drooping Debtor,
the weeping Wife, distracted Family,
Law-deluded Creditor Morality, Trade,
Commerce, Policy, the insulted Legisla-
ture all in one group bending suitors
to you, ⁷⁴

he wrote, and certainly in the next decade there was increasing pressure on Parliament. The Thatched House Society was one suitor. Another was Doctor William Smith.

Smith was a medical doctor with a passion for helping the poor, who in 1778 published a book entitled Mild Punishments Sound Policy. He was already well known, for John Howard had mentioned his work among debtors in the Ludgate, which was supported by a Westminster Charity,⁷⁵ and in 1776 Smith had published a report on the conditions of London prisons, entitled The State of the Gaols in London, Westminster and the Borough of Southwark. His philanthropic work continued into 1779, for in that year he petitioned the House of Commons for compensation for the £566 he had expended

73 Barrister-at-law, p. 27.

74 Ibid, p. 103; Cf. pp. 91-5.

75 State of the Prisons, p. 226.

in caring for more than a thousand prisoners who received no other medical attention. His petition was opposed by the Justices of Middlesex and Surrey, who were no doubt reacting to his published condemnation of their gaols. In response to this opposition, nearly every prison in London presented a petition in favour of Smith.⁷⁶

In his book, Smith considered both types of prisoners, and berated the severity of the Criminal Law. He felt that a police force was necessary to restore order in the metropolis. Sensitive awareness of the life of the lower orders in London distinguished the book, and this extended to their experience of the debtor laws. He graphically portrayed:

the poor honest, though unfortunate debtor ... torn from his homely habitation, and hurried, with unfeeling insolence, to a loathsome prison, there to languish under oppression, extortion, hunger and disease.⁷⁷

Smith proposed that all such injustice be removed by enactment of a sixty-six clause bill which he had drafted. He proposed that in the first instance a debtor should be imprisoned for forty days. During this time, he was to advertise his confinement in the Gazette, and any creditor might then notify his intention to oppose the discharge on grounds of fraud. Such a charge was to be heard by a jury. The bill was heavily weighted against harsh creditors.⁷⁸ Smith also suggested the

76 CJ, xxxvii. 493, 503, 513, 514, 809, 869.

77 Smith, Mild Punishments Sound Policy, p. 10. D.M. George used this work as the basis of her description of insolvency; George, pp. 297-302.

78 Smith, pp. 65-93.

establishment of a charity to lend money to small traders who were, as he realised, badly affected by the existing debtor laws.

William Smith's proposals did not include the abolition of imprisonment on mesne process. The author of Considerations on the Laws between Debtors and Creditors had read Smith's book, but he wanted a more radical reform. He wanted Parliament to pass an "Act to enable Creditors to recover Effects of Debtors and preserve the Liberty of the Debtor". Commissioners were to supervise these provisions, which sought execution against property rather than the person.⁷⁹

This series of legislative suggestions fed a growing Parliamentary concern at the laws. The sessions of 1779 and 1780 saw a major attack on the law by Viscount Beauchamp, a Vice President of the Thatched House Society. In 1779 revelations on the condition of small debtors led to the passage of a bill banning all arrests for debts below £10. There was sharp opposition to this bill from corporations and parishes in the City of London.⁸⁰ Even less popular were the reforms Beauchamp proposed in 1780. A great flood of petitions were received in opposition to Beauchamp's bill from merchants and traders all over England. They argued that the bill was "of a most dangerous and destructive Tendency", and that it would weaken public credit. Criticism of such petitions by

79 Loc. cit., (1779), pp. 39, 45.

80 CJ, xxxvii. 426-7, 434-5.

the Fleet debtors is understandable. They observed that the merchants were:

sheltered from the Horrors of a Prison
by the Friendly Aid of the Bankrupt
Laws, be their Debts ever so Large. ⁸¹

Another defender of the bill was Edmund Burke, at this stage member for Bristol. His constituents were not at all happy with his opinions upon the subject, and he had to justify his behaviour in a speech delivered at the Bristol Guildhall prior to the election later that year. The five thousand electors of Bristol included all freemen and freeholders, and consequently the small traders were a powerful political bloc. These men thought that Burke had betrayed their interests, and he was defeated.⁸²

Nevertheless Burke's statement of the case for reform was memorable. He declared that the existing law of debt was faulty, for it assumed that any debtor should be able to pay his debts whenever the bailiff might demand them. This gave the individual creditor too much power. Burke described the operation of the old law as "so savage and so inconvenient to society",⁸³ and he looked forward to more enlightened legislation.

Burke's opinions were to be much quoted in later years. So also were the opinions of Sir James Bland Burges, a Bankruptcy Commissioner who was later a member

81 CJ, xxxvii. 612, 630.

82 Cf. L. Namier and J. Brooke, (eds), History of Parliament : The House of Commons 1754-1790, i. 283-290.

83 Writings and Speeches of Edmund Burke, ii. 384-6.

of the Commons. In an essay published in 1783, and entitled Considerations on the Law of Insolvency with a Proposal for Reform, Burges strongly criticised the manner in which creditors treated their debtors. "Is a man to be tried, to be condemned, to be punished without a knowledge of the accusation brought against him?",⁸⁴ he asked. Here was a very well informed supporter of change.

RESISTANCE TO REFORM

Despite the excellent logic of its advocates, Beauchamp's 1780 bill was lost. For the next ten years, the only statute passed was one limiting the period of committals by the Courts of Requests. Not even any temporary insolvent acts were passed.

Why was there this unusual legislative inactivity? In part a result of the economic malaise of the times, it was also a tribute to the skill of the advocates of reform. The work of John Howard, and of the Thatched House Society had raised the treatment of debtors to a matter of some importance. That in itself did not persuade creditors to support reform. By challenging the whole system of the law, including both its harsh provisions and its acts of clemency, the reformers only persuaded creditors that all temporary insolvent acts were bad, on the good grounds that they upset regular credit. Burke was very strongly opposed to temporary relief, which he described as neither humane nor politic, but only a matter of expediency, in order to clear the

⁸⁴ Quoted by C. Fane, Bankruptcy Reform: In A Series of Letters addressed to Sir Robert Peel, p. 51.

gaols.⁸⁵ The Earl of Abingdon told the Lords that he would only support permanent and not temporary relief, and the preambles of bills presented to Parliament mirrored this sentiment.⁸⁶ Thus the persons who formerly would have guided temporary insolvent bills through the House now sought only more lasting reforms, and temporary bills lost supporters. But why were the permanent bills rejected?

Given the widespread attitude of men of the eighteenth century towards the English Law and Constitution, that it was the best of all possible laws, perhaps this is not surprising. The opinions of lawyers were commonly thought to dominate Parliament. Yet we need also to look beyond Parliament to the merchant and trading classes, who reacted so fiercely to Beauchamp's bill. The petitions that crowd the pages of the Journals of the House of Commons represent a substantial amount of opposition. In the Bristol electorate, a public meeting was held and a former Sheriff was sent to London armed with a petition to present to Burke, who was regarded as defiant of his electorate's opinion.⁸⁷

Merchants and employers feared that the mutual trust which had to undergird credit would be destroyed by a permanent relief act. It was widely commented by pamphleteers that creditors had become tougher than

85 Writings and Speeches of Edmund Burke, ii. 386.

86 PR, n.s. xi. 253; PP, 1788, Bill 551.

87 Correspondence of Edmund Burke, iv. (ed. Woods). 231-2. P. Magnus, Edmund Burke: A Life, p. 94.

they had been in the past. "There is now in the nation", wrote Edward Farley, "a spirit of qualifying",⁸⁸ which made creditors resist any major concessions to debtors. Before this is too quickly identified as a nascent laissez-faire attitude, it should be borne in mind that it was the reformers who claimed to detect greater resistance to statutory change. Adam Smith made no comments on the debtor law, and thus what the reformers called new was in part only the usual eighteenth century trader's attitude, expressed in new circumstances. Yet there is some evidence that the seventeen-eighties saw the expression of a new voice of trade. This can be given an economic justification. There was a growing sense of insecurity among the commercial classes in the less stable and more national economy of the late eighteenth century. There was great concern in the period at the increase in the number of bankrupts.⁸⁹ The role of paternalism by the justices in determining food prices that would not harm the poor, was tending to decline.⁹⁰ There was a growing gulf between those who were traders and those who were not. A petition from Gloucester merchants in 1780 protested that Beauchamp's bill would "open a Door for crafty and designing Men to draw in and defraud the Unwary and fair Trader".⁹¹ On the contrary it was the duty of

88 Farley, p. 141.

89 GM, lii. (1782). 138.

90 E.P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century", Past and Present, 1. (1971). 89ff. Cf. B. Inglis, Poverty and the Industrial Revolution, pp. 32ff.

91 CJ, xxxvii. 612.

law to protect commerce.

The great defender of the existing law was William Paley, the Archdeacon of Carlisle. In his Moral and Political Philosophy, written in 1785, Paley defended imprisonment for debt against the charge that it was unjust. He described the capias procedure as a "public punishment" which was eminently reasonable. Frauds ought to be punished, and the creditor was an appropriate person to apply the retributive treatment: "No discretion is likely to be so well informed, so vigilant or so active, as that of the creditor,"⁹² wrote Paley.

In law, imprisonment for debt was not regarded as a punishment, but only as an inducement to pay. This trader's morality, expressed by Paley, relied upon the coercive factor in the law, although Paley also feared that the poor would suffer from a change because less credit would be given. Moreover many traders also would suffer; for they had to buy on credit before they could sell. The suffering of a few was necessary for the good of all. It was:

more eligible that one out of a thousand should be sent to jail by his creditors than that the nine hundred and ninety-nine should be straitened and embarrassed, and many of them lie idle by the want of credit.⁹³

Such an attitude was heartily endorsed by the commercial petitioners to Parliament. Debtors were not to be trusted, and who had ever met an honest one? On such

92 Paley, Works, p. 34.

93 Ibid, p. 34.

themes the opposition to reform became increasingly vocal.⁹⁴

ATTITUDES IN THE ERA OF THE REVOLUTIONARY WARS

In a massive study, E.P. Thompson has traced the development of a working class consciousness in England, during the period of the French Revolutionary Wars.⁹⁵ His thesis that a single thread runs through working class and radical politics has not gone unchallenged, and it is therefore interesting to test attitudes to the debtor laws against his thesis. In broad terms they do seem to fit together. During the early part of the era, the supporters of insolvency reform seem to have been more radical in political stance than at any other time. Rather than assume that the British Constitution was the best in the world, they chose to see the debtor laws as a typical part of a statute book written and enforced by those who desired to repress the poor. The craftsmen and shopkeepers who were a large part of the debtor population were not truly a working class, however, and one cannot describe the debate over the debtor laws as part of a class conflict. However Hardy and the men of the London Corresponding Society were also craftsmen and shopkeepers.

94 CJ, xxxvii. 734; cf. GM, lxxiv. (1804). 704.

95 Thompson, The Making of the English Working Class.

Edward Farley's book, Imprisonment for Debt Unconstitutional and Oppressive, was an early example of such radical literature. Written in 1788, its radicalism looks back to Wilkes, rather than forward to the French Revolution.⁹⁶ He defended the theory of the British Constitution, although his understanding of that theory was original, for he believed that unreasonable or unnatural legislation was automatically void. Freedom was his great theme: "Liberty sweetens life and protects property; it is the birthright of all mankind."⁹⁷ Farley examined the legal procedure for imprisonment of debtors, and he pronounced that they were evil. Not only had the courts failed, so too had Parliament. It should produce equity, it only served to "work iniquity".⁹⁸ And who could wonder at the carelessness of Parliament, when its members were immune from the operation of the law. Members: "must be indulged in it because they know too much".⁹⁹ As for the bailiffs who grumbled that they could be accused of breach of Parliamentary privilege should they mistakenly arrest members, Farley had no more sympathy for them than for members of Parliament. Let:

both houses of Parliament ... walk in slow procession, once a year at least, from Westminster-hall to Whitechapel Church, that the gentlemen of the bum might be able to identify their persons.¹⁰⁰

96 Op. cit., p.ii.

97 Ibid, p. 19.

98 Ibid, p. 31.

99 Ibid, p. 103.

100 Ibid, p. 118.

The basis for Farley's demands was both traditional and radical. Reform should be based on reason, but also on religion. He reprobated a nation where "Molock had more influence in Parliament than the Bible". Yet he also supported the prisoners who chose: "the wise method of blowing up the walls of the prison". He ended with a warning that a society where: "the nobility and gentry keep saucy footmen to drive away the distressed", was "knee-deep in the blood of innocence", and was on the point of collapse. So he appealed not to Parliament but to the people to return to God, and change the law.¹⁰¹

Farley's book was widely read, and apparently influenced later attitudes. E.P. Thompson refers to radicalism in the debtor prisons during the nineties. In 1793 two hundred signatures were collected in King's Bench prison for a petition for Parliamentary reform. Government spies were recruited there also, but Thompson calls the prisons "finishing schools for radicals."¹⁰²

Such radicalism not unnaturally expressed itself in opposition to the debtor laws. On 17 December 1793, Patrick William Duffin and Thomas Lloyd were tried in court for a seditious libel, "that [they] were wicked, seditious, and ill-disposed persons, and greatly disaffected to the King and the government and constitution."¹⁰³ They were debtors who had attached a notice to the door of the Chapel of the Fleet prison where they were held. It read:

101 Ibid, pp. 144, 145, 157-8.

102 Thompson, pp. 132, 692.

103 Howell's State Trials, xxii. 318.

This house to let; peacable possession will be given by the present tenants, on or before the 1st day of January 1793; being the commencement of the first year of liberty of Great Britain. The republic of France having rooted out despotism, their glorious example and success against tyrants, render infamous bastiles no longer necessary in Europe. ¹⁰⁴

Duffin and Lloyd conducted their own defence, addressing the jury in fervent language. They made little attempt to persuade the Court of their innocence, but rather argued that the debtor laws were totally illegal. They seem to have been part of a radical "club" of prisoners. The jury showed no sympathy, and they were sentenced to the pillory, but the mob acclaimed them as heroes. ¹⁰⁵

Thus there was a gap between the attitudes of freeholders and of the masses. The defence had asserted during the trial that the popular attitude was firmly against the law, for in a riot there were always attempts to release the debtors, as had been the case in 1780. Informed opinion was also turning against the law, and it was particularly influenced by the Report of the Parliamentary Select Committee of 1791-1792. This Report into the debtor laws clearly stated the bad consequences of the law in its comments and published evidence. The report stressed that the law was often disadvantageous to creditors, for debtors:

¹⁰⁴ Ibid, c. 320.

¹⁰⁵ AR, xxv. (1793). pt. ii. 7-8.

conduct themselves as Men who think that they have no longer any interest in being honest, and know that the Law, by imprisoning their Persons has spent its Force against them.¹⁰⁶

Evidence had even been gathered from prisoners at King's Bench, so these comments had the support of observations, and the Report also acknowledged the sufferings of some debtors.

Critics of the law used the Report to demonstrate that Parliament itself condemned the procedure. For example a handbook for debtors discussed this Report, and also mentioned the reports of the Society and Burges's comments.¹⁰⁷ The cautious author of this handbook looked to the Judges for reform. This and other works¹⁰⁸ implied that others besides the Radicals were beginning to oppose the laws. Even some creditors began to distrust them. Radical opinion was fed by a rewriting of Farley's book by a certain Mr King in 1804. If anything, King's opinions were more extreme than those of Farley, but they were presented with less rhetorical skill.¹⁰⁹ Another writer emphasised the baneful effects of the practice, especially on foreigners.¹¹⁰ The most impassioned cry for reform came from Walter J.

106 PP, 1792, Report no. 97, p. 40.

107 The Debtor and Creditor's Assistant, pp. 81-2.

108 E.g. P. Coloquhoun, A Treatise on the Police of the Metropolis, (1795), p. 589.

109 J. King, Remarks on Imprisonment for Debt.

110 Remarks on the Operation ... of the Laws for the Recovery of Debts, reviewed in European Magazine, 1. (1806). 47-9.

Baldwin, a prisoner in King's Bench. In 1813 he published a pamphlet entitled Imprisonment for Debt alike injurious to Creditor and Debtor, which was excerpted from his larger volume entitled Punishment without Crime. Baldwin, who also petitioned Parliament for release, felt that he had been unjustly imprisoned. In an incoherent and agitated argument, he endeavoured to persuade creditors that they were never aided by the existing law, which, he claimed, was: "the original and final cause of that which it is said to be intended to provide against, of the non-payment of debt". The only persons who profited from the law were: "a blood-sucking train of imposters, swindlers, lawyers, jailers [sic] and their adherents."¹¹¹

Some of these pamphlets must only have had a very limited circulation, and added together, they all probably did less to influence public attitudes than did a series of articles written by James Neild of the Thatched House Society, and published in the Gentlemen's Magazine from 1803, to 1813. Written in the form of open letters, introduced by the comments of John Coakley Lettsom, they aroused considerable public interest. In 1812 all the reports were brought together in the folio volume, The State of the Prisons in England, Scotland and Wales.

Neild, on his retirement in 1792, had recommenced his visits to prisons, and he was especially disturbed by the debtor's lot during the agricultural depression of 1799-1800. He therefore visited all the gaols to

¹¹¹ Op. cit., pp. 3-4, 20. PD, xxvii. 419.

discover whether debtors were provided with food. His findings, which were published in 1801, revealed that thirty-nine prisons provided no allowances to their debtors, and in twenty-five there was no knowledge of the existence of the Thatched House Society.¹¹² Thus the seventy-seven letters he published in the magazine were part of a publicity campaign. They dealt not only with debtors, but with the general conditions of every prison in the Kingdom. In the first five years of their publication, when they were given pride of place in the magazine, they had a large audience. William Wilberforce spent time with Neild discussing the question in 1804.¹¹³ A favourite theme of the letters, which no doubt Wilberforce approved of, was the need for "pious counsellors" and regular religious services in gaols.¹¹⁴ There were also lists of the numbers of debtors in every gaol, and Neild, like Howard, declared that the poor debtors were the most pitiable of all prisoners. In Letter LIV the practice of imprisonment for debt was condemned, with supporting quotations from Howard, Beccaria, Johnson, and Voltaire.¹¹⁵

The whole correspondence was very influential. In part this was no doubt due to Lettsom's prefaces, for he was a well-known Quaker doctor, a friend of John

112 Persons Confined, p. viii; GM, lxxxvii. (1817), pt i. 308.

113 Life of William Wilberforce, iv. 82.

114 GM, lxxiv. (1804), 99; ibid, lxxv. (1805), 299.

115 Ibid, lxxvii. (1807), 25; ibid, lxxvii. (1808), 777-780.

Howard, foundation President of the Philosophical Society, and a notable humanitarian.¹¹⁶ Neild, within a short time of the first of the articles, detected that they:

have produced and are producing incalculable advantages; more than I have in thirty years been able to effect, has hence been brought about in twelve months.¹¹⁷

This change in attitude is noticeable in several contexts, not the least of which was the House of Commons, which in 1811, at his bidding, amended the insolvency bill to include debtors on the Isle of Man.¹¹⁸

In his writings, Neild betrays a tendency to regard himself as Howard's successor, and his admirers often compared the two. In truth he was more meticulous, but far less perspicacious than the great prison visitor. Lettsom's remark that:

Howard never imagined what the pervading eye of Neild detected, that the court of a prison should be moistened with the depth of twelve inches of foul water, whilst the prison was denied the possession of this necessary fluid in its pure state,¹¹⁹

whilst intended to be flattering, unwittingly establishes this point. Nevertheless, the public enjoyed reading the minute details about prisons. When in 1808 Neild published the seventh edition of the history of the Thatched House Society, it included nearly five hundred pages of detailed descriptions of gaols. His 1812

116 GM, lxxxv. (1815). pt. ii. 469f; DNB, xi. 1013-5; Southwood, p. 46ff.

117 GM, lxxv. (1805). 691.

118 Ibid, lxxxi. (1811), pt. i. 387, pt. ii. 129, 424.

119 Ibid, lxxiv. (1804). 4.

volume was an expansion of this work, and was hailed as an important social document.¹²⁰

Such publicity had a profound effect upon legislation concerning debtors. It led also to exaggerated admiration for Neild, reflected in a poem inscribed in a copy of his 1808 work:

Who in the steps which Howard trod,
Still seeks the prisoner in his drear abode,
Who whispers to the Debtor, Friend, Go forth,
And be a glad inhabitator of earth.
Who to the Wife and Children pleas'd restores
The hope and comfort of their smiling hours
Who must in labours but to Howard yield,
Friend to the friendless - and his name is
Neild.¹²¹

- which is not very good poetry, but it is excellent documentary evidence.

THE THEMES OF REFORM LITERATURE

Thus by the end of the eighteenth century there was widespread acceptance of the need to revise the debtor laws. Unpopular with the lower orders, they were, as Patrick Colquhoun pointed out, tacitly acknowledged by others to be erroneous and inhumane.¹²² Yet there was little agreement on the specific nature of the needed reform. Some, like William Smith, had drafted suggested legislation, but the content of these drafts varied from the abolition of the capias process against the person, to a permanent system of relief for

120 Edinburgh Review, xxii. (1814). 385-400.

121 Account of the Society, inscription in the title page of the Kashnor (A.N.U.) copy, signed Rev. James Plumptre.

122 Colquhoun, p. 589.

prisoners. Consequently, Parliament only tinkered with the law. Members of Parliament felt the obligation to make some changes, for they too had been influenced by the literature of reform. The themes of that literature had become unanswerable in the intellectual climate of the period.

Pity for the debtor was foremost among these themes. Even Archdeacon Paley conceded that to pursue "a sufferer" from insolvency was "repugnant not only to humanity but to justice",¹²³ if misfortune had brought him to this state. Compassion was not a new social doctrine, but the extension of it to the gaol was. One of Howard's biographers claims that his great achievement was to show that society had a duty to the inmate of the debtor's or felon's cell.¹²⁴ Others shared in that achievement.

If the sufferings of the prisoners were exposed - and most of the literature recounted various sad tales, - so also was the waste of the creditors' money behind the prison walls. Burke and Burges stressed that the laws needed to be revised, if only to protect the creditor's interests. Such an argument was important, for those who accepted Adam Smith's stress on the rights of commerce were inclined to be unhappy at reform. If laissez-faire is in any sense a theme of the age, then the reformers themselves were good laissez-faire men, in wanting to see the end to the temporary Insolvent

123 Paley, p. 34.

124 W. Dixon, John Howard and the Prison World of Europe, p. 20.

Acts which so disrupted credit arrangements. Yet they were more than this. They turned their moral scrutiny to the creditor's treatment of his debtor. A creditors' handbook published in 1789 stressed that the creditor was answerable for the debtor's well-being.¹²⁵ Creditors ought not to lend if they doubted whether they would be repaid.¹²⁶ And those who failed to pay should be treated compassionately. In the words of Sir George Paul in 1784:

As Debtors, they have broken no moral law, offended no positive institution. Doomed, by folly or misfortune to be the necessary sacrifices to commercial faith, they claim an abundant share of our pity and attention.¹²⁷

In part these changed attitudes reflected the much larger debate on the poor laws. Those who wanted a more "scientific" poor, and those who opposed it, had their rough parallel in the supporters and opponents of the proposal to stop the waste and loss occasioned by imprisonment for debt.¹²⁸

The issue may seem one of economics. This was not how eighteenth century men viewed it. To them it was primarily a constitutional and legal question. In an age which venerated English Law as the basis of English Liberty, reform was not easy. One might,

125 Considerations on a Commission of Bankruptcy, p. 29ff.

126 Cf. Considerations on the Laws between Debtors and Creditors, p. 43.

127 Paul, Considerations on the Defects of Prisons, quoted by GM, lxxiv. (1804). 706.

128 Cf. J.R. Poynter, Society and Pauperism, passim; B. Inglis, pp. 26-33.

like Edward Farley, delve back into Saxon Law, and find that the "Constitution" declared that "the body of the debtor shall always be free, that he may serve the King in his wars, cultivate the ground, and maintain his family."¹²⁹ But it was a supreme insult to find, as Johnson did, "a superiority for Scotland over England in one respect, that no man can be arrested there for a debt merely because another swears it against him."¹³⁰ And others made favourable comments on the law in Portugal, Holland, and France compared to that of England. Thus campaigners for reform ceased to argue from the ancient constitution. Veneration of the law was replaced by bitter rejection of it. Instead of arguing that imprisonment for debt was illegal, Bentham, among others, complained: "No, the great grievance is - not that it is illegal but that it is legal."¹³¹

Consequently the reformers, of both "traditional" and less romantic viewpoints, condemned "Judge and Co." as "leeches"¹³² and "a blood-sucking train of imposters."¹³³ Others had noticed the dominance of lawyers in society, and in Parliament, where they were the second largest professional group,¹³⁴ but opponents of the debtor laws had special reason to dislike this situation. King

129 Farley, Title Page.

130 Boswell's Life of Johnson, iii. 77.

131 Bentham, "Rationale of Evidence", Works, ed. Bowring, vi. 180.

132 Howell's State Trials, xxii. 339.

133 Baldwin, p. 3.

134 G.E. Judd, Members of Parliament 1734-1832, pp. 51-2.

wrote:

THIS IS THE AGE OF LAWYERS; the country is law-ridden ... the chicanery of attornies and the sophistry of counsel have involved every subject in litigation.¹³⁵

Thus opposition to the insolvency laws drew on the great themes of a period of profound intellectual reappraisal.

WIDER FORCES

The movement to change the debtor laws could not have occurred independently. It is intelligible only in the context of a wider shift in opinion. Reform of the laws governing the well-being of society, which characterised the period of the early and middle parts of the nineteenth century, has often been linked with the increasing political strength of the middle classes, with their distinctive commercial ethic. A commercial ethic is no explanation for the reform of the debtor laws. The opinions of the trading classes about imprisonment for debt became increasingly confused and defeatist. Explanations for the change of the law are better provided by the forces of Evangelicalism and Benthamite Radicalism.¹³⁶ These two forces are in some senses opposites, and although Dicey noted how they shared common ground in an individualistic philosophy,¹³⁷ individualism less characterised the reformers of the law than it did their opponents.

¹³⁵ King, pp. 9-10.

¹³⁶ Webb, p. 67.

¹³⁷ A.V. Dicey, Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century, pp. 397-407.

Evangelicals were prominent in all aspects of prison reform. Thomas Fowell Buxton who succeeded Wilberforce as leader of the campaign to abolish the slave trade, wrote a book in 1818 on the need for changes in the prisons, including aid for debtors.¹³⁸ Henry Thornton introduced the 1813 Act which provided for the debtors in London prisons. The Clapham Sect organised a "Society for Educating the Children of Confined Debtors" in 1796, the Conductors of which included Thornton, Wilberforce, Burdon, Barclay, and Clarke. This Society, which had the warm commendation of James Neild, sought to preserve children from the licentious environment of a prison, by employing "serious and exemplary characters" to run schools within the walls.¹³⁹ And, as has already been shown, the evangelical emphasis in the Thatched House Society was also marked.

It has sometimes been thought that the Evangelicals were never seriously interested in reforms in England. This is misleading, if the insolvency laws are a typical example. Wesley had, many years before, after preaching in a debtor prison, remarked that it was: "a nursery of all manner of evil. O shame to man, that there should be such a place, such a picture of hell upon earth."¹⁴⁰ Furthermore imprisonment for debt was described by Stanhope as "the White

138 Buxton, An Inquiry whether Crime and Misery are produced or prevented by our Present System of Prison Discipline.

139 GM, lxxiii. (1803). 72-3; ibid, lxxiv. (1804). 197.

140 J. Wesley, Journals, ii. 246.

Slave Trade",¹⁴¹ and the same kind of concern was shown towards the two evils. The Evangelicals sought first to make the debtor laws tolerable, by improving prison conditions, and aiding the release of individual debtors, but they were prepared to alter the laws, if relief proved unworkable.

Thus Evangelicals and other religiously motivated persons played an important role in awakening concern for debtors. They wanted not so much reform, as moral reformation. This is made clear in the tract of the Religious Tract Society that was distributed to debtors. It eulogised liberty, and stressed that the loss of it was a great misfortune, for which the debtor was not necessarily to blame. But its exhortations were particularly addressed to those who had offended, upon whom it urged a more moral life, with no more gambling, and no more parties on the Sabbath.¹⁴²

One would not expect demands for reform in such a tract, and indeed the debtor was urged simply to endure his situation. Reform was the responsibility of a higher class, not even the traders of the middle class, but the aristocracy. However, there is no simple division of the supporters and opponents of reform on the basis of their "class". Jeremy Bentham was a lawyer, a member of the middle orders, and an advocate of laissez-faire. Yet he saw no virtue in the insolvency law. It failed as a means to compel

141 Quoted by H. Jemmett, A Letter to ... Peel, p. 27.

142 The Debtor's Friend, (1813), pp. 1-2.

payment, it failed as a punishment; it was:

"unjustifiable in every imaginable point of view."¹⁴³

Bentham did not seek total abolition of the weapon, but that: "in the case of insolvency, punishment ought to be applied to him, and him alone, on whose part there has been blame."¹⁴⁴ He desired the abolition of mesne process imprisonment, and its replacement by a summary judgement and an immediate sequestration of the debtor's goods. Insolvents should be compelled, on pain of death, to hand over their property, and either when rashness or extravagance was proved, or until it was disproved, they should be imprisoned.¹⁴⁵ Bentham's reforms were designed specifically to assist the creditor, but as compensation to the imprisoned debtors, he suggested that their prisons should be painted white, whereas those for petty criminals were to be painted grey, and those of felons, black.¹⁴⁶

Bentham's specific proposals were thus sympathetic to the trader's interests.¹⁴⁷ However these proposals were in many cases not published until after the reform of the law, so it was Bentham's rational approach to the Law, and not his actual insolvency propositions that were influential in nineteenth century jurisprudence.

¹⁴³ Bentham, vi. 177.

¹⁴⁴ Ibid, vi. 182.

¹⁴⁵ Ibid, vii. 389; ibid, iii. 352.

¹⁴⁶ Ibid, i. 429-431.

¹⁴⁷ Cf. C. Phillipson, p. 187.

This is crucial to the understanding of those pressures which moulded Parliamentary action.

For it was in Parliament that the constitutional, philanthropic and commercial arguments were put to the test. And it was there that the cries of the traders were slowly over-ridden. It was the triumph of compassion, not of theory, but that compassion had sought and found philosophical buttresses.

CHAPTER IV

THE JURY FALTERS

Law reform was not a popular pastime of eighteenth century Parliaments. Parliamentary procedure was so tedious that it discouraged private members from promoting general bills. The attitude of back-bench members reinforced what procedure implied. Many county members wanted to reduce the apparatus and expense of government, and they therefore opposed reforms.¹ Insolvency bills as a temporary expedient were unavoidable, but the organisation of permanent facilities for relief was distasteful.

If anything, members from popular and urban constituencies were even more opposed to reform. The franchise in Bristol, York, London, and Westminster included the shopkeepers who were the most frequent users of imprisonment for debt, but did not usually include the artisans who suffered from it. The members for these constituencies were obliged to listen to commercial opinion, and consequently even members like John Sawbridge, who were Radicals on other issues, were heard in ardent support of the existing laws.

Most members considered that the bankruptcy laws were more important than those for insolvency, for bankrupts were the cream of debtors. The commercial desirability of insolvent bills was an important factor

¹ S. Lambert, Bills and Acts, p. 189.

to relatively few members, but others had equally good grounds for opposing them.

LATE EIGHTEENTH CENTURY ATTEMPTS AT REFORM

Most eighteenth-century attempts at reform sought to extend the provisions of the Lords' Act. Inflation provided an economic justification for extending the act beyond debts of £100. Such extensions were not universally popular, but they avoided the appearance of innovation.

The first attempts to extend the Lords' Act were made in 1774 and 1775. About them little is known, for they were not reported in any of the unofficial records of the debates, so it is necessary to rely on the Journals of the House. Herbert Mackworth, the member for Cardiff, and Richard Whitworth of Stafford brough introduced their bill in the 1774 session as late as 3 June. The bill, which was designed to punish fraudulent debtors and not to relieve them, required prisoners seeking relief to state on oath how much money they had spent in gaol. One of the great complaints of creditors was that debtors when imprisoned suddenly "lost" all their property, by transferring it to a relative. By the end of the session the bill had been reported back from the committee, and the maximum daily expenditure set at sixpence.²

2 CJ, xxxiv. 756-7, 803-7. PP, 1731-1800, viii. Bills nos. 252, 253.

In the 1775 session Mackworth and Whitworth had additional support from the members for Reading and Bodmin for the bill which was presented on 6 April. In this bill the eligible daily expenditure was set at one shilling, and some controls were also placed on executions by the creditor. The groats were raised to four shillings a week, and debts of up to £500 were to be eligible for the Lords' Act. This bill was far more generous to the debtor, but it got no further than that of the previous year.³

There was no great enthusiasm for these bills in the House. But in 1779 Lord Beauchamp, a Vice President of the Thatched House Society, added his voice to those seeking reform. He seems to have desired a total change in the debtor laws. Beauchamp, who held the pocket borough seat of Orford, supported North's Ministry, and was a Lord of the Treasury between 1774 and 1780, although he voted with the Whigs after 1783, and was an opponent of Pitt.⁴ His proposal in 1779 to end the use of Mesne Process for debts between forty shillings and £10 had the support of the Attorney General and the Solicitor General. Nevertheless it was very fiercely opposed outside the House. It is difficult to estimate what percentage of arrests were for such small debts; it may have been one third. Petitions were presented to the Commons by many traders

³ CJ, xxxv. 235 et. seq. PP, 1731-1800, viii. Bill no. 269.

⁴ GEC, vi. 511-2.

who opposed the bill. The householders of Stepney and Hackney complained that all credit would be destroyed by the bill, and that they would be forced to use the Superior Courts, with their more expensive proceedings. The small traders of Westminster and the Sheriff of London also complained. Court officers from inferior courts complained that the business of these courts would be greatly reduced. In the third reading, members from Norwich and London tried to secure immunity for their districts.⁵ However the bill, which noted in its preamble how the practice: "is found by experience to be attended with much oppression to great numbers", was amended only in minor details concerning court procedure, and a last-ditch conservative amendment was lost by twenty-nine votes to sixty-four.⁶

This act (19 Geo. III c. 70) set free thousands of debtors, and it also drastically reduced the business of inferior courts like the Marshalsea Court, in which Francis Place's father had served as a bailiff. Place described in his autobiography how his father lost his post when three quarters of the business of this London Court ceased.⁷ Small debts became subject only to imprisonment on execution, and the greater proportion of such actions were transferred to the Superior Courts at Westminster.

5 CJ, xxxvii. 414-7, 425-7, 430-5.

6 Ibid, 434.

7 Autobiography of Francis Place, ed. Thale, pp. 31-2.

This measure was only the first stage of Beauchamp's strategy for reforming the law. In the next session he proposed a fundamental alteration of the Lords' Act. His bill allowed the release of any prisoner after a brief period in prison, as soon as he had surrendered his property by an oath. The prisoner could only be remanded if he was suspected of concealing his property, instead of the previous unlimited power of the creditor to remand. The teeth of the bill were its requirements that all debtors be either released or remanded under its provisions. Thus honest and industrious debtors who could not afford to seek release were to be discharged, unless the plaintiff would pay groats. Prisoners with debts of up to £200 were eligible, and only those held for debts over £100 had to render account of their expenditure in prison.⁸ The bill was far more than an extension of the Lords' Act, for it applied to prisoners on Mesne Process. Based upon the Scottish principle of cessio bonorum, it would have made imprisonment for debt a fearful thing only for fraudulent debtors.

This was the very aspect of the bill which disturbed traders throughout the country. The bill was "of a most dangerous and destructive tendency",⁹ in the words of the Middlesex traders' petition, for it would remove the fear of imprisonment. On 28 February 1780, the representatives of the London traders appeared before the House. They described their opposition as a defence of the Ancient Constitution.

8 PP, 1731-1800, viii. Bills nos. 346, 347.

9 CJ, xxxvii. 612.

Had: "the people now living ... grown wiser than their ancestors?", asked Mr Lee, the counsel for Westminster.¹⁰ The reformers might well have retorted that the Ancient Constitution gave no such powers to creditors. It was further complained that the bill would weaken trade, and that it was considered desirable because it was based on "humanity" and "imagined ... inconvenience", whereas in fact creditors were rarely so unjust as to keep their debtors in gaol without reason.

The bill had a rough passage through the House, and after recommitment, was eventually withdrawn. There were several reasons for this course of events. Firstly, it was not the only bill on debtor-creditor relations before the House. In addition to a contentious bill seeking the reformation of the Halifax Court of Requests, another bill was under discussion which proposed the removal of the right of Courts of Requests to imprison on execution. This bill was introduced on 7 March by Robert Vyner, the member for Lincoln City, and another flood of petitions were presented to the House to answer it. Supporters of the old law were unhappy enough with the reforms of 1779; the prospect of so many other changes horrified them.

A second reason was the series of procedural delays that the supporters of the bill permitted. Edmund Burke, a careful student of the insolvent

¹⁰ PH, xx. 1396.

laws,¹¹ and a supporter of the bill, urged that it be tactfully recommitted, so that he might have time to appease the angry traders in his Bristol constituency. Then the sickness of the Speaker, Sir Fletcher Norton, led to an adjournment of the House for a fortnight in April. Burke blamed the failure of the bill on these delays.¹²

A third reason for the failure of all of the reform measures lay in the Gordon Riots, which began on 2 June. Only the bill affecting the imprisonment of small debtors was still viable at this stage, but it was overshadowed by a glut of Protestant petitions. Lord George Gordon had declared his strong opposition to Beauchamp's bill on 28 February, when he had criticised Members of Parliament, because they knew nothing about trade, and sympathised with debtors only because they were debtors themselves.¹³

The House was deeply divided over the bills. Most members seem to have felt inclined to be sympathetic toward the debtors, but Burke, C.J. Fox of Westminster and Charles Turner of York City supported the bill in the face of strong opposition from their constituents.¹⁴ No doubt other borough members were not so independently minded. The House seems to have disliked the arguments

11 Cf. Correspondence of the Rt. Hon. Edmund Burke, ed. Fitzwilliam and Bourke, iv. 524.

12 Writings and Speeches of Edmund Burke, ii. 383-4; Correspondence of Edmund Burke, iv. (ed. Woods). 231-2.

13 PH, xx. 1405-6.

14 PR, Ser. 1. xvii. 170-180.

of reformers, for their noise drowned out Mr Bearcroft, who was the Counsel in favour of the bill.¹⁵ The legal phraseology of the bill was also amiss, and the final draft was three times the length of the original.¹⁶

Both Beauchamp's bill and that of Vyner failed, and the latter bill was even more notorious with small traders. However, the publicity of the Thatched House Society was engendering sympathy, especially for the small debtor. Changing the small debtor's lot seems to have been a main aim of the Society at this stage, and five years later, in February 1785, it awoke a public outcry by publishing details of abuses in the London prisons, in the report To the Lord Romney President ... and other Benefactors to the Society.¹⁷ Apparently the Society also prepared the draft of a bill to correct these abuses.¹⁸ The bill was introduced into the Commons by Beauchamp, a Vice-President of the Society, and supported by M.A. Taylor, the member for Poole, and Sir Joseph Mawbey, the member for Surrey. Noting the differing powers of London Courts of Requests, and how in some such courts, the debtor could be detained for many years, it proposed the curtailment of imprisonment to one day for every shilling of debt, with a minimum period of twenty days. The bill also abolished the payment of gaol fees by small debtors.

15 GM, 1. (1780). 452.

16 Writings and Speeches of Edmund Burke, ii. 384.

17 B.M. 64. 95K. 3(2). I did not have access to this Report.

18 Cf. State of the Prisons, p. 229.

It was a moderate reform, which encountered little opposition in either House, and received the Royal Assent on 4 July.¹⁹ (25 Geo. III c. 45.) In the next session, the Act was extended to the whole of England. (26 Geo. III c. 38.)

Thus Beauchamp, who had in 1780 sought to drastically change the insolvency laws, succeeded in limiting the duration of imprisonment for small debts. Why was he so unsuccessful? Beauchamp himself blamed "the lowest class of men belonging to the profession of the law,"²⁰ when he spoke to the House in 1781, and certainly the lawyers were an important group in the Commons. Also Beauchamp shared many of the attitudes of his opponents. All the speakers in the House agreed that creditors should not be too harsh to their debtors, and all condemned fraudulent actions by insolvent men. One of the toughest sections of Beauchamp's bill was the provision for the punishment of debtors concealing their property or refusing to surrender it. (It is doubtful whether these clauses would have been found to be workable by the Courts.) Therefore it is not surprising that no temporary insolvent bills were passed between 1781 and 1793, for Beauchamp and his opponents all regarded such bills as harmful, and as an incitement to fraud. In 1783 moves to introduce such a bill failed. In 1784, 1785, and 1787, such bills were passed by the Commons after a struggle, though in 1787 the House

19 Cf. Account of the Society, pp. 550-560;
CJ, xl. 939 et. seq.

20 PR, ser. 2. iii. 608.

divided 61 to 46 over the measure, which was strongly resisted by London members.²¹ These measures all failed in the Lords. Meanwhile the debtors remained behind locked doors.

A PRIVATE CAMPAIGN IN THE LORDS

The House of Lords was more uniformly suspicious of law reform in the late eighteenth century than was the House of Commons, and insolvency bills were frequently challenged there. Yet for thirty years, from 1781 to 1813, one Peer kept up a lonely vigil in support of reform of the debtor laws. Such consistent advocacy, unequalled in the Commons, was the act of Francis Rawdon-Hastings, the Earl of Effingham, who in 1783 became Baron Rawdon of York, and in 1793, on the death of his father, Earl Moira. In 1808 the title of Marquess of Hastings passed to him from his mother.

Rawdon's greatness was not founded upon his Parliamentary career. He is remembered as Lord Hastings, Governor of India from 1813 to 1822, and also for his military prowess in the American War of Independence, at the Battle of Bunker Hill, in the French Revolutionary Wars, and in the expansion of the Indian Empire.²² In the Lords, he took little part in debates,²³ except on this one issue. Rawdon was at

21 PR, ser. 2. xxii. 60-61.

22 Cf. Ross, Lord Hastings, pp. 14-15, 209-218.

23 DNE, ix. 118.

times the sole supporter of insolvency bills, and he sought to formulate a permanent relief bill which was acceptable to the House.

Rawdon's family were from Yorkshire, but they had settled in Ireland in 1641, and the earldom of Moira was an Irish title. As heir of the Hastings title, he also belonged to one of the most distinguished of English families. His maternal grandmother had founded "Lady Huntingdon's Connexion" of Evangelical chapels. In 1787 he quarrelled with Pitt, and thereafter voted with the Whigs, in 1806 entering the Privy Council as Master of Ordnance in the Ministry of All the Talents. But he was not a Foxite, and in 1797 he made himself the object of ridicule by privately proposing that he should lead a Ministry which would exclude Fox, Pitt, and Portland.²⁴ A taciturn man, his political significance stemmed solely from his friendship with the Prince of Wales. (In 1795, on the occasion of the Prince's marriage, he proposed in the Lords that the celebrations should include the liberation of all debtors, for the Prince had declared himself in favour of insolvency relief.²⁵)

Rawdon first showed his concern for debtors in 1783, shortly after he entered the Lords. On this occasion he drew attention to the cries of distress from the prisons, and introduced a temporary insolvency bill into the House, also announcing that he intended

24 Ross, pp. 30-31. Cf. The Farington Diary, ed. J. Greig, vii. 115.

25 PR, ser. 2. xiii. 393, 453; GEC, vi. 377-8.

to introduce a bill which would totally transform the lot of debtors, in the next session.²⁶ Over the next thirty years his approach to the problem varied, but his persistence did not. Initially Rawdon spent much of his effort on promoting temporary insolvency bills, which he justified on the grounds of humanitarian concern for the "multitudes of unhappy men now starving in our prisons."²⁷ He soon lost his faith in temporary bills, although during his time in the House, the Lords initiated such bills more often than did the Commons; in 1793, 1794, 1797, 1801, 1806, 1811 and 1812, compared to the Commons bills of 1804 and 1809. This reversed the trend that had previously existed. Rawdon saw such bills as a poor alternative to permanent relief, and although he was prepared to support them, he introduced few himself.²⁸ The reforms he desired were to be based "not upon the mere loose principle of humanity", as temporary bills were, but on "public justice".²⁹ Rawdon promoted permanent bills of various kinds in the years 1792, 1793, 1796 and 1808; he sought a Select Committee on the subject in 1784 and 1797, and gained one in 1809, and he also encouraged others to introduce bills.

Rawdon, compared to other members of the House of Lords, was very radical in the reforms he advocated, although such views were more common outside the House.

26 PR, ser. 1. xi. 247, 253; PH, xxiii. 1098-1103.

27 PH, xxiii. 1098.

28 Cf. PD, vi. 368; ibid, vii. 154-7.

29 PR, ser. 3. xvii. 393-4.

He described the "present system" as "a mass of rubbish and of oppression that ought to be entirely removed."³⁰ There was no reason why the creditor should have power over his debtor's body. Imprisonment should only be a punishment for fraud. He cited the reports of the Thatched House Society to show the injustice of a practice which was based on "a principle of rigour and absurdity."³¹ His most comprehensive bill, that of 1793, proposed the abolition of Mesne Process arrest for debts under £20, and required all other arrests to be justified before a judge, and security given, before the debtor could be taken.³² But from year to year he varied his approach in the light of what he thought would be most likely to pass. Only in 1793, when both the Lords and the Commons were voicing deep concern at the treatment of debtors, did he demand complete reform, or nothing at all.³³ Ten years before this, he claimed to have received one hundred and fifty letters on the subject,³⁴ and demanded the right to bring witnesses before the House. Rawdon never became skilled at Parliamentary tactics, but he learnt the expediency of making allies and encouraging them to introduce legislation. His public reputation nevertheless remained higher than his Parliamentary one, for his approach closely conformed to popular attitudes.

30 PD, ser. 1. xix. 1170.

31 PH, xxx. 647.

32 PR, ser. 2. xxxv. 235.

33 Ibid, p. 236.

34 PH, xxiii. 1098, 1101.

He was praised by Horne Tooke, and also by the writer of the Parliamentary Register, who admired: "the manly sentiments of liberality which are ever the characteristics of his nature."³⁵ The public always liked a soldier.

In these years the Lords were to initiate some permanent reforms. In 1786 Rawdon persuaded the Lord Chancellor to extend the Lords' Act to debts of £200. (26 Geo. III c. 44.)³⁶ In 1793, as a concession to Rawdon, Loughborough, the Lord Chancellor, introduced a bill which further extended it to debts of £300. (33 Geo. III c. 5.) In 1801 an important act was passed enabling the creditor to release his debtor from prison without surrendering his claim to the debt. The old law had long been an obstacle to compassion. In 1808 the former Lord Chancellor, Ellenborough, promoted a bill which allowed the release of all prisoners owing less than £20 after twelve months' imprisonment. Although Rawdon criticised this act as ungenerous, it was an important concession to small debtors.³⁷

Insolvency law had in the past usually been made at the initiative of the Commons, so Rawdon achieved a great deal in these changes. They must, however, be balanced against the fierce resistance to any fundamental reforms. Although the Lords' Select Committee of 1809 actually condemned the whole practice, the Lords opposed any major legislative alterations.

35 PR, ser. 2. xi. 253; A. Stephens, Memoirs of John Horne Tooke, ii. 403.

36 AR, xxix. (1787). 138.

37 48 Geo. III c. 123; PD, ser. 1. xi. 252-3.

The public impression was that the great lawyers of the Upper House were absolutely opposed to any change.³⁸

This resistance to reform, other than in minor details, was led by the great legal figures of the age. Lords Thurlow and Mansfield opposed Rawdon in the seventeen-eighties. Mansfield's damning comment was that:

a mistaken compassion ... had of late years got such possession of the minds of men, that the edge of the law was frequently turned against the honest and deserving creditor.³⁹

During the era of the revolutionary wars, the Chancellors, Loughborough, Ellenborough and Eldon ensured that the reactionary attitudes of the Ministry included opposition to all insolvent law reform. Eldon, according to the writer in the Dictionary of National Biography, devoted his whole energy to defeating any changes in the laws concerning the slave trade, catholic relief and debtors.⁴⁰ Such opponents in 1793 tore Rawdon's bill to shreds in Committee, after welcoming it in the first reading. They were, they said, prepared to permit reform, but only when the Judges of the Superior Courts drafted it; and the Judges' idea of reform was an ungenerous temporary act.⁴¹

Rawdon found compensation in a number of supporters at various periods. In the early seventeen-

38 Cf. A. Stephens, ii. 403.

39 PH, xxii. 628-9.

40 Op. cit., xvii. 990. Horace Twiss, Life of Lord Chancellor Eldon, ii. 5, erroneously suggests that Eldon supported reform.

41 PR, ser. 2. xxxv. 281, and passim.

eighties, Walsingham, who held positions in the Ministries of both North and Pitt, supported the abolition of "the whole absurd and impolitic system from the beginning to the end."⁴² Later in that decade the newly created sixteenth Duke of Norfolk, Charles Howard, also co-operated with Rawdon to aid reform, for he was a zealous advocate of any expansion of personal liberties. In 1804 the Duke of Clarence assisted Norfolk in shepherding the insolvency bill through the House, in the absence of Rawdon. Above all, in the first decade of the new century, Henry Richard Fox, the third Baron Holland showed great sympathy with Rawdon's campaign. Holland, who was on some occasions the only representative of the Whigs in the Upper House,⁴³ in 1806 introduced a reform bill at a time when Rawdon could not do so, and like Rawdon, he expressed his dissatisfaction with temporary acts. Thus although only a few Peers were interested in commercial questions, the Lords were less conservative than the Commons on this question in the period of the Revolutionary Wars. The new commercial mentality had touched the attitude of the Commons, but not the Lords. It is therefore not surprising that the permanent law of 1813 was initiated in the Lords. It is more surprising which Noble Lord introduced it.

⁴² PR, ser. 1. xi. 249.

⁴³ DNE, vii. 568.

THE COMMONS' SELECT COMMITTEE

The era of the Revolutionary Wars was thus a time of vigorous activity in Parliament, which found itself more divided on the issue than previously. This can be compared with the campaigns for abolition of the slave trade, and for Catholic emancipation. In each case a few minor alterations were made to the law, tacitly implying that the old law was capable of abuse, but it was only these abuses which Parliament would correct. The fundamental rights of the creditor over his debtor, like those of the trader over his cargo, were sacrosanct. New standards were enforced in gaols and in ships, and they eliminated much of the physical suffering, but that was all. This attitude was particularly evident in the Commons, where commercial pressures were felt by more members.

It is significant that it was the period 1788 to 1790 before the French Revolution was widely condemned, which saw the last great attempt in the eighteenth century to change the law by persuading the House of Commons to support it. The proponent of reform was James Burges who had already published a pamphlet on insolvency reform, and who had also written in support of Rawdon's efforts.⁴⁴ His bill was introduced when Rawdon had temporarily abandoned his efforts.

Burges was well qualified to speak on the subject. The son of a famous soldier, he had both legal and University qualifications, and had served as a Bankruptcy

⁴⁴ Burges, A Letter to the Earl of Effingham on his lately proposed Act of Insolvency, (1783). B.M. 6405. b. 9.

Commissioner. He was an acquaintance of Pitt, to whom he gave £1,000 to help pay his debts. Later a Commissioner of the Privy Seal, he was also an enthusiastic supporter of Wilberforce's campaign to abolish the slave trade. Consequently when he became the member for Helston in 1787, he was a natural leader of the advocates of reform.⁴⁵

His bill, presented in each of the three years from 1788, was more extensive than any that Rawdon had yet offered.⁴⁶ The bill aimed at bringing insolvency law into line with the bankruptcy statutes. It required the creditor to give security of £100 before arresting a debtor. This was an onerous requirement for the creditor. It was balanced by provisions which were to end the status of the prison as a privileged community. Instead the creditor was to be permitted to proceed against the debtor's property while his person was in gaol. None of the "Rules" or liberties of the gaol were to be continued, and a special gaol dress was to be compulsory. The debtor could either avoid this fate by paying a bond to prevent imprisonment, or he could seek relief after two months in gaol, if he could pay ten shillings in the pound.⁴⁷

These were drastic proposals. Burges claimed that a number of lawyers supported the bill, including "one high character",⁴⁸ but few lawyers spoke for it

45 DNB, iii. 305-6.

46 GM, lviii. (1788). 417.

47 PP, 1731-1800, Bills nos. 551, 575-7, 596.

48 PH, xxvii. 158. Was this person Lord Mansfield?

in the Commons. The bill was co-sponsored in 1788 by Sir William Dolben, the member for Oxford University, and it had the backing of Sir Joseph Mawbey, the member for Surrey, who was not worried about the absence of support from lawyers,: "That the lawyers were against it, Sir Joseph said, he thought a strong reason why the gentlemen of the House of Commons should be for it."⁴⁹

Initially the bill split the commercial members from the legal and conservative vote, and united them with those who supported the bill on compassionate grounds. Its provisions appealed to those who wanted to swiftly release the honest debtor, and also those who wanted to punish the fraudulent. However several speakers against the bill ended this alliance, when they pointed out that the "lower order of traders" would not be able to afford to lodge the £100 bond required of creditors, and thus would be unable to recover their debts under such legislation. Moreover the Judges' opposition to the bill was reported to the House.⁵⁰ The supporters of the bill won the first division, but after it had been condemned by Mr Mainwaring of London, and the Sheriff of the City, it was defeated. In 1790 a further attempt to pass the bill was ended on the understanding that abuses in gaols should be investigated.⁵¹ Thus Burges's bill prepared the ground for the Select Committee of 1791-1792.

49 PR, ser. 2. xxiii. 494.

50 PR, ser. 2. xxvii, 114, 123.

51 Ibid, pp. 123-4.

It was not Burges, however, who sought the appointment of a Committee into the Practice and Effects of Imprisonment for Debt on 12 May 1791. The motion was proposed by the Whig Charles Grey, the member for Northumberland, (the future Earl Grey of the Reform Act). Burges's voice was not heard in the debate, and he was not appointed to the Committee.

The use of select committees to investigate problems, rather than hear evidence on bills, was an innovation made in the Commons in the middle of the eighteenth century.⁵² It quickly became a favourite procedure. In this case the Attorney General, Sir Archibald MacDonald, supported the proposal, agreeing with Grey that there was widespread criticism of the laws, and that they were not always fair either to debtors or creditors. He hoped that the laws would one day be altered.⁵³ Further support was expressed by Edmund Burke, who said he had always desired to promote reform himself, but never found the time to do so. Debtors, Burke declared, were really slaves. The fault of the law was that it treated the interests of debtor and creditor as irreconcilable. Burke supported this Whig motion only days after he had broken with Fox, for he had not abandoned his belief that only "roguish" debtors should be punished.⁵⁴

52 P.D.G. Thomas, The House of Commons in the Eighteenth Century, p. 265.

53 PR, ser. 2. xxix. 406-9; PH, xxix. 510-3.

54 PH, xxix. 513-4; P. Magnus, pp. 252-3.

The motion to appoint the Committee was carried unanimously, and its membership was named, and included all the merchants and lawyers of the House. Burke, Fox, Pitt, Grenville, North and Sheridan were among the members, as were Barham, Henry Thornton, Wilberforce and Beauchamp, who were subscribers of the Thatched House Society.⁵⁵ The Committee immediately embarked upon its industrious investigations, including research into the number of persons who were suffering imprisonment. The next session of Parliament continued the Committee, which tabled its report on 2 April 1792.

Evidence for the Report had been gathered from a number of sources, including the keepers of several gaols, and from prisoners in King's Bench during a visit there by the Committee. The witness whose evidence was the most influential was Richard Grasswell, the Secretary of the Thatched House Society. His enumeration of sufferings caused by the old law was repeated almost verbatim in the Report.⁵⁶

The Report contained a careful summary of the law, and a description of its effects. While not specifying what reforms were needed, it emphasised how unsatisfactory the existing practice was. The scandalous possibility of imprisonment for life, and the immunity of a confined debtor's property were both

55 CJ, xlvi. 560.

56 "Report ... into the Practice and Effects of Imprisonment for Debt", PP, 1792, Report no. 97. pp. 26-8, 87-92. The Report was reprinted in CJ, xlvii. 641-673.

stressed. So also was the failure of the law to deal with fraud: "Nor is a fraudulent Insolvent Debtor, as such, the Object of public Punishment",⁵⁷ the first part of the Report concluded. The compassion of the Committee was stirred by the "utmost extremity" that many prisoners experienced. They noted that "Many of the Prisoners are stated to be in a Situation of extreme Poverty and Want."⁵⁸ Thus the Report catalogued the plight of ordinary debtors, rather than only describing the exceptional cases which were so often recounted by reformers. The estimate of the number of debtors and the debts for which they were confined actually increased, rather than decreased alarm at the situation.

Yet no decisive action followed. Grey felt unable to prepare any legislation so late in the session, and he looked to Rawdon, with whom he was no doubt in close contact.⁵⁹ The Lords showed less sympathy, except to allow the passage of a temporary bill, - an expedient that the Report had criticised. The Report became part of the folklore of opponents of imprisonment for debt, but it bore no legislative fruit. Grey himself was so discouraged at the reaction of the House that he abandoned the whole question.⁶⁰ In the next two decades the Commons only supported one permanent reform, and that was an attempt to increase the creditors' powers under the Compulsory Clause in the Lords Act.⁶¹

57 Ibid, p. 16.

58 Ibid, pp. 21, 36.

59 PR, ser. 2. xxxii. 154-5; ibid, xxxiii. 17.

60 Ibid, xxxviii. 172.

61 PP, 1801-2, (16) i. 35, 49, 261.

The Upper House rejected this proposal; for once Commerce was deadlocked against Conservatism, and the poor debtor escaped without injury.

THE REDESDALE ACT OF 1813

By the close of the Napoleonic era, the English Parliament had begun a long debate on the amendment of the Criminal Law. In the Commons the learned approach of Samuel Romilly brought pressure on the Administration. Romilly owed much to Bentham, but he also co-operated with Tories like Wilberforce. He particularly sought to reduce the statutory limitation of capital punishment, but his reforming zeal covered a wider range of issues. Imprisonment for debtors under the Civil Law was one such issue. Romilly considered that the existing debtor law was undesirable, but he felt that advocating reform was "entertaining hopes and encouraging expectations which could only end in disappointment."⁶² Even seeking a reduction in the use of capital punishment was not so futile an endeavour.

Nevertheless Romilly sought some minor reforms. As Solicitor General in the Ministry of All the Talents, he determined to reform the bankruptcy laws, at least in part. In this he was successful,⁶³ and he next turned to the issue of the liability of the estate of a

62 Memoirs of Sir Samuel Romilly, ii. 209-210.

63 Ibid, ii. 156; (46 Geo. III c. 135.)

deceased man for his debts. Such a reform, by increasing the alienability of property, was regarded as a threat to their interests by the landed classes. The sacredness of property was a cardinal principle of English politics, and consequently Romilly's bill failed, for, said Sir William Grant, it was based on the principles of the French Revolution.⁶⁴ A similar reform was rejected by the Lords in 1813. Yet such a reform, and a similar one increasing the alienability of the property of living debtors, was a pre-requisite to the abolition of the capias procedure. Until creditors gained the power to seize all of a debtor's estate and property, they would not abandon their power over his person. And such reforms came only in the eighteen-thirties.

Romilly was defeated in this attempted reform, and although he retained intentions of spending his "first leisure" in endeavouring to devise satisfactory legislation on insolvency, he only succeeded in extending the benefits of the Lords' Act to prisoners for Costs in Equity Courts. There were few such prisoners, but Romilly vowed that "if I can procure liberty for only two or three persons every year, I shall be well satisfied."⁶⁵ He despaired of achieving anything more comprehensive, and little realised that he would play a vital role in the passage of a bill that would set thousands free.

⁶⁴ Ibid., 185, 192. Cf. Public Characters of 1808-9, pp. 335-340.

⁶⁵ Memoirs of Sir Samuel Romilly, ii. 268. Cf. C. Phillipson, pp. 305-6.

As Solicitor General, Romilly had not been an important officer of state. He and the more senior Attorney General were legal officers for the Crown, but they were not in Cabinet or the Privy Council, and so their judgements were not necessarily endorsed by the Ministry. Thus Romilly had little advantage in promoting reform over Viscount Folkestone who was a son of Radnor, the Vice President of the Thatched House Society, and a relation of its President. Folkestone in 1812 secured the passage of two slight amendments to the Lords' Act for the benefit of creditors.⁶⁶ The Attorney General had the legal expertise to draft bills, but although his opinion might be influential over back benchers, there was no such support in 1813.

It was fitting that successful measures for reform should be introduced in the Upper House. The Peers had tended to show more compassion than the Commons Men, for they continued to feel responsible for the wellbeing of poor debtors while trading opinion in the Commons only complained of the immorality of the poor. The Thatched House Society was strongly supported by a wide ranging group of Peers and country gentry, excluding only "Ultra" Tories. From the Lords had come a number of minor reforms in the previous two decades, and also most of the temporary insolvent acts. And in 1809 Rawdon achieved what he had long desired; a Select Committee to convince the Lords of the evils of the system.

66 (52 Geo. III c. 13; 52 Geo. III c. 34.)
C.J. lxvii. 84.

Rawdon chaired this Committee, and he seems to have drafted its Report. In its investigations the Committee heard a limited amount of evidence, from gaolers, from the Secretary and Treasurer of the Thatched House Society, and from experts on foreign law. Its Report uncovered injustice in the treatment of debtors, which made the imprisonment of felons seem mild punishment. The chief objection of the Report was even more fundamental; that:

In the procedure towards a defendant on Mesne Process, there is a total Abandonment of the attention to personal Liberty, which is the most marked Feature in the Administration of British Justice.⁶⁷

This was a strong complaint, and the Report proposed remedies in three areas: court approval of Mesne Process arrests, the provision of relief after three months' imprisonment on execution, and a more summary procedure to deal with small debts. Those who undertook such reforms, they concluded, "are likely by their exertion, to prevent a greater Degree of Human Depravity or of Human Misery" than in any other field.⁶⁸

It was one thing for Rawdon to persuade a small Committee to propose such reforms. It was quite another thing to enable a bill incorporating such drastic changes to pass. But on 6 July 1809, from a most unexpected

67 "Report of the Committee on the present state of the Practice of Imprisonment for Debt", Journals of the House of Lords, (1809), p. 184.

68 Ibid, p. 188.

quarter, one "of the most strenuous enemies to innovation ... Lord Redesdale"⁶⁹ rose to address the House on the debtor laws. He intimated his intention of promoting legislation in the next session which would restrict the power of arrest, and provide permanent relief for debtors, and trial by jury for small debts.⁷⁰ And in the upshot, although all these proposals were not finally achieved till 1845, in 1811 a Frivolous Arrests Bill was passed which limited Mesne Process Arrest to debts above £15, (51 Geo. III c.124), and in 1813 another bill passed which established a permanent procedure to release any debtors after three months' imprisonment. (53 Geo. III c. 102.) He had evidently adopted the Committee's prescription.

There was considerable irony in this situation. The acts for which Redesdale was responsible did not abolish imprisonment for debt, but they limited its scope, and prevented permanent imprisonment at the whim of the creditor. Thus they earned the support of James Neild, who had earlier appeared before the Lords Committee.⁷¹ Redesdale did not see these reforms as the first stage to the abolition of imprisonment for debt; he rather sought to introduce the Scottish formula of a cessio bonorum; the release of the debtor from gaol in exchange for the surrender of his property, after a cautionary period of imprisonment.⁷²

69 Memoirs of Sir Samuel Romilly, ii. 297.

70 PD, ser. 1. xiv. 888.

71 GM, lxxxiii. (1813). pt. 2. 437f.

72 PD, ser. 1. xiv. 888.

Yet the act was by its very inadequacy to prepare the ground for later reforms, and the fierce opposition to it by Eldon and Ellenborough was because they realised this would occur. These opponents argued that from the creditor's point of view it would be fairer to extend the availability of the old law, than reduce it.⁷³ As for providing permanent relief for imprisoned debtors, Ellenborough questioned whether it was: "reasonable that debts generally contracted otherwise than criminally should be subjected to so small a degree of punishment."⁷⁴ But sympathy for debtors, not creditors, motivated the bills.

Why did Redesdale take issue with his Tory friends on this subject? He had in the past opposed Romilly's reform bills, and he continued to be regarded as an "Ultra" Tory. In many ways his background was very similar to that of Eldon and Ellenborough, for like them it was to his legal abilities that he owed his seat in the Lords. He had been created Baron Redesdale in 1802, after being named as Lord Chancellor of Ireland. Called to the bar in 1777, a Tory member in the Commons from 1788 to 1802, Solicitor General, Attorney General, and then in 1801 Speaker of the House of Commons, he had slowly risen in political significance. As Solicitor-General he took part in the prosecution of Hardy and Horne Tooke. His bitter and undiplomatic opposition to Catholic Emancipation while

73 Ibid., xvii. 644.

74 Ibid., xix. 1169.

in Ireland led to his dismissal by the Ministry of All the Talents. It was this able if inflexible man who introduced the reform measures.⁷⁵

Redesdale was a very active member of the Lords. Normally a staunch Tory, his motive on this occasion was not a desire to upset existing laws, or cause innovations for the sake of them. He sought reform because he believed creditors were not generous enough to their debtors, and especially because he wanted a more uniform legal procedure than the confused procedures that existed.⁷⁶ His only previous comment in Parliament on the insolvency laws had been in 1800, when he supported a bill in the Commons to allow for trial by jury in the London Courts of Requests.⁷⁷ This was one of the changes he advocated in 1809, although he never introduced a bill to effect it. Apart from this, his conversion to reform seems to have been an unexpected consequence of the Lords' Select Committee.

It was the fact that a Tory Lord should advocate such measures that greatly aided their passage, especially through the Upper House. This did not earn Redesdale any love from the leaders of the House, who remained implacably opposed to reform. Ellenborough told Romilly: "As for Lord Redesdale ... he ought to be put in a straight waistcoat."⁷⁸ With such

75 Lord Redesdale, Memories, pp. 22-3; GEC, x. 759-760.

76 PD, ser. 1, xxiii. 321; cf. ibid, xviii. 1238.

77 PR, ser. 3. xii. 138.

78 Memoirs of Sir Samuel Romilly, iii. 120.

opponents, it does seem remarkable that the 1813 act in particular was passed by the Lords. Romilly sensed this and he retorted to Ellenborough that he had only himself to blame for the success of the bill.

Ellenborough's reply was curious:

He said he had suffered it to pass because he was weary of opposing such bills; and he had been given to understand that all the defects in it were to be removed in the Commons.⁷⁹

It was certainly true that first Rawdon's, and then Redesdale's persistent demands for reform must have grown tiresome. Redesdale introduced his bills for four years in succession, and among their supporters were men who sensed the strangeness of the alliance; Holland and Rawdon especially, but also "citizen" Stanhope, the Earls of Rosslyn and Suffolk, and the Scottish Lords Melville and Erskine, who interpreted the bill as a tribute to their own laws. Such a group could certainly make Ellenborough weary.

Yet it is quite certain that Ellenborough and Eldon could have mustered sufficient opposition to defeat the measures. Instead they let the Mesne Process bill pass so late in the session of 1810 that the Commons could not consider it, but early enough in 1811 to allow its passage. The more important bill for permanent relief of imprisoned debtors faced a harder struggle. In 1810 it was voted down, and in 1811 withdrawn by Redesdale, perhaps on condition that the other bill was passed. In 1812 it was voted down on

⁷⁹ Ibid, pp. 120-1.

the second reading, but in 1813 it was passed through the Lords early in the session. Why was this allowed?

It is apparent from the comments of its supporters over the four years that few of them thought it a totally satisfactory measure. Rawdon, though he defended it, himself wanted more radical reforms, including the abolition of arrest.⁸⁰ The bill proposed to set up a court to handle relief, but the legal status of this court was unclear, and Stanhope disliked the requirement of three months' imprisonment before a prisoner could be released.⁸¹ But the Whig Lords played a shrewd game, not altering the bill against Redesdale's will. Moreover, although Eldon and Ellenborough opposed the bill, they tried to appear not overly hostile to it, and smoothed the path for a temporary act in 1811 and 1812, when the permanent bill seemed set for failure. Ellenborough said that "he would prefer a temporary inconvenience to a general and lasting evil."⁸² It is more likely that the sustained increase in the number of prisoners forced him to take some such action, but essentially these temporary bills were palliatives to an unhappy Redesdale. Ellenborough implied to Romilly that similar reasoning lay behind the passage of the permanent bill through the Lords in 1813. Ellenborough preferred to arrange for the bill to be

80 PD, ser. 1. xix. 1171.

81 Ibid, xix. 362-3.

82 Ibid, xxiii. 323; cf. ibid, xx. 323.

defeated in the Commons, because if a prominent Tory like Redesdale was forced too often into Whig lobbies over such a bill, the result might be undesirable.

In referring it to the Commons, Ellenborough was confident that this would be the end of it. Either the Lower House would reject the bill, or they would so substantially amend it that the Lords would have just cause to throw it out.⁸³ After all, the bill was scarcely satisfactory in the form in which it had left the Lords.

Unfortunately for Ellenborough, he had left Samuel Romilly out of his reckonings, and Romilly had formed a shrewd suspicion of the intentions of the Ministry. The bill was guided through the Commons by William Kenrick, the government member for Bletchingly, and on 14 May he proceeded to add a number of clauses in committee to increase the harshness of the bill, including heavy fines for concealment of property, and capital punishment for the fraudulent.⁸⁴ Romilly himself would have liked to have made the bill more generous, but he realised that any changes would be foolish. He therefore praised the Upper House for its liberality, and stressed that Eldon and Ellenborough had supported it. He admitted that the bill had been criticised, but, as he told the Commons:

⁸³ Memoirs of Sir Samuel Romilly, iii. 108-9.
Cf. A.S. Turberville, The House of Lords in the Age of Reform, p. 214.

⁸⁴ CJ, lxviii. 483-5.

The bill before the House had been called an innovation. It was undoubtedly so, but it proceeded from those who were pretty generally the decided enemies of innovation, and came therefore with a double claim upon the attention and deference of the house.⁸⁵

This was shrewd politics, and at Romilly's behest all the main amendments were withdrawn. Although the Common Council of the City of London expressed opposition to the bill, Romilly even tried to dissuade its representatives from their stand. At last he could proudly conclude: "In the meantime ... the Bill has fortunately escaped the amendments both of enemies and of friends",⁸⁶ and the Tory Lords were obliged to allow it to become law. (53 Geo. III c. 102.)

The chicanery of the Ministry had rebounded against it. However they were not so easily defeated. In July, Eldon advised Romilly that he was unable to appoint a Commissioner to administer the provisions of the act, for neither his salary nor his duties were specified in the statute, and it was thus quite unworkable. He told this to Romilly because "all the odium of the measure remaining ineffectual ... would undeservedly fall on him [Eldon]",⁸⁷ when there was a legal explanation for it. This was a case of winning whatever the outcome, and Romilly told the Lord Chancellor that his objections to the act were trivial.

85 PD, ser. 1. xxvi. 304.

86 Memoirs of Sir Samuel Romilly, iii. 111.

87 Ibid, p. 112.

Nevertheless three months later no Commissioner had been appointed. The Act seemed destined to lapse.

The Ministry did not accomplish this, but their acquiescence was scarcely graceful. On 24 September Arthur Palmer was appointed Commissioner after urgent representations from Redesdale.⁸⁸ Before that, Liverpool and Sidmouth had connived at delay, their reason being that the salary of the Commissioner was uncertain, and a suitable appointee unavailable.⁸⁹ Such reasons deserve sceptical treatment, for Romilly had months before mentioned to Eldon that Cooke, an expert on bankruptcy law and a moderate Tory, was available for appointment. Eldon had not been interested.⁹⁰

Arthur Palmer was selected for more acceptable qualities; staunch support of the Ministry, and lethargy in his work. Only on 26 November did he begin to hear petitions from debtors, and then only at the rate of twenty a day. At this point further problems arose from unco-operative court and prison officials. Redesdale complained:

Where some officers attended the Court, whilst others chose to disobey the orders of the Commissioner ... it was clear that a disposition existed somewhere to thwart the execution of the act.⁹¹

88 PD, ser. 1. xxvii. 101-2.

89 Ibid, xxvii. 77-8.

90 Memoirs of Sir Samuel Romilly, iii. 112-3.

91 PD, ser. 1. xxvii. 207; cf. ibid, cc. 76, 177-8.

It was a case of delaying till Parliament met, and then repealing the act. In the new session Government spokesmen explained that for technical reasons the act would be suspended, but out of generosity, the Ministry would expedite the passage of a temporary bill to free the expectant prisoners. From this course of action they were forced to withdraw by the continued pressure of Redesdale and the Whigs, as well as an outcry from petitioners. In a compromise arrangement, both the temporary bill (shorn of its clause repealing the permanent act) and an amendment to the permanent act were passed.⁹² In the Commons William Best, the member for Petersfield, made a last attempt to amend the bill out of existence. Best, a future Chief Justice of Common Pleas, was a recent addition to Tory ranks, and his sudden objections were overridden, so he determined to present his own bill in the next session.⁹³ In this grudging fashion Parliament adopted the Redesdale plan.

THE AFTERMATH

"I learnt last summer", wrote Basil Montagu in 1815, "that many respectable merchants in the provincial towns had expressed great dissatisfaction at the Insolvent Debtors' Bill."⁹⁴ Montagu was a friend of Romilly, and his observations are trustworthy, for he was a prolific writer on bankruptcy

92 54 Geo. III c. 28; 54 Geo. III c. 23; PD, ser. 1. xxvii. 181-4, 205-7, 222-3.

93 Ibid, xxvii. 256-264.

94 B. Montagu, Enquiries Respecting the Insolvent Debtors Bill, p. 514.

reform, and a supporter of the new law.⁹⁵ Members of Parliament soon discovered the same discontent when a large number of petitions were presented to the House by merchants and traders. In 1815 the petitions came like a flood; in 1816 like a torrent. They alleged that the bill was ruining the commercial well-being of the country. Its consequences included:

most extensive frauds, highly injurious to national morals, destructive of those habits of industry and of that good faith and mutual confidence for which this country has so long been distinguished.⁹⁶

So ran the petition from the Lord Mayor and Common Council of the City of London. The chief complaint of the petitioners was that any debtor could ignore the demands of his creditors, declare that "a Redesdale will pay you",⁹⁷ and in three months have his freedom, no matter how dishonest he was. Traders were horrified at such a law, and they demanded the abolition of the Insolvent Debtors Court, which administered the relief. Great pressure was placed on Members of Parliament; so great, that Romilly concluded that repeal was inevitable. His only hope was that the experiment would be enlightening to any future reformer.⁹⁸

Yet the Court survived. It was a closely-run contest, in which the good tactics of reformers were

95 DNB, xiii. 662-5.

96 CJ, lxx. 79.

97 PP, 1816, (472), iv. 24/368.

98 Memoirs of Sir Samuel Romilly, iii. 233.

decisive. Romilly was prepared to accept an imperfect Court rather than no Court at all. He was supported by James Abercrombie, a Scottish Member, in his attempt to offer sufficient concessions to satisfy opponents, while preserving the substance of the Act. This practical approach contrasted with the folly of the friends of the Court in the Lords. With Rawdon's departure to India as Governor General, and Redesdale silent (apart from attempting reforms in the Courts of Requests in 1820⁹⁹) only Stanhope remained, and he had more theoretical notions of reform. In 1814 he sought the total abolition of arrest on Mesne Process, and on the occasion of the visit of the King of Prussia to the House he interrupted proceedings and demanded that debtor petitions be read.¹⁰⁰ Such idealism only endangered the existing reforms.

In 1815 William Best offered an alternative measure to the Commons. In his bill, imprisoned debtors were not to be allowed to seek relief until they had been in gaol for a period which varied according to the composition received by creditors. Those able to pay fifteen shillings for every pound of debt would be released after three months; those paying ten shillings after twelve months; and the majority of debtors, who could repay even less, were to suffer two years of confinement. This bill was so badly

⁹⁹ PD, ser. 2. i. 742.

¹⁰⁰ Ghita Stanhope and G.P. Gooch, The Life of Charles Third Earl Stanhope, pp. 214-8; PD, ser. 1. xxvii. 607-619.

drafted that it had to be withdrawn,¹⁰¹ but it was only a prelude to the attack on the bill in the 1816 session.

The first premonition of the disputes about the Court in this session was the number of petitions before the House, many of them apparently organised by a "Society for Preventing Frauds in Trade".¹⁰² Then on 14 March John Ingram Lockhart, the Lord Advocate of Scotland, sought leave to introduce a bill suspending the Act. Romilly, Abercrombie and Henry Brougham sought to divert the anger against the Act into a Select Committee. By a vote of 82 to 71 the Commons decided that the bill should continue, but that a Committee should also be set up to report on the operation of the Act.¹⁰³ This Select Committee was the means by which suspension of the Redesdale Act was prevented, for to it were passed all subsequent complaints. The second reading of Lockhart's bill was delayed while the Committee heard evidence from members of the Society for Preventing Frauds on Trade and from other traders and lawyers; from Charles Runnington who was the new Commissioner of the Court, and from Richard Grasswell, the Secretary of the Thatched House Society. Most of the evidence was critical of the Court. Every wholesaler in London was said to be against the Act, and prices were said to have risen by ten percent as

101 Ibid, xxx. 493-8, 1001. Cf. Metropolitan Magazine, xi. (1834-5). 111.

102 Cf. PP, 1816, (472), iv. 20/365.

103 CJ, lxxi. 195; PD, ser. 1. xxxiii. 287-292.

a result of it.¹⁰⁴ Debtors, it seemed, saw Court relief as an alternative to the payment of debts. The creditor was no longer the only one who could afford to bargain.

In the face of such evidence, the Committee seemed likely to propose suspending the Act. Only the prisoners were unhappy with Lockhart's bill. On 13 June, when the Committee met to draft its conclusions, Romilly attended and argued against suspension with all the eloquence of which he was capable. Romilly felt that he turned the tone of the meeting,¹⁰⁵ for the Committee only recommended that a bill be passed which allowed the Court to refuse relief to any "grossly unjust" debtor. It recommended that more extensive alterations be carried out in the next session.¹⁰⁶

Thus late in the session the suspending bill was dropped, another bill was rushed through both houses to effect the suggestion, (56 Geo. III c. 102), and the Court was saved. The sessions of 1817 and 1818 saw no discussion of the Act at all.

The Redesdale Act was due to expire in 1819, and inevitably this reopened the debate. The Attorney General proposed the establishment of another Select Committee into the Court, and the flood of petitions recommenced. In the House a chief critic of the Act was Robert Waithman, Member for London, who was a linen draper by trade and a political reformer by

104 "Report ... on the Insolvent Debtor Acts", PP, 1816, (472), iv. 16/360, 21/365.

105 Memoirs of Sir Samuel Romilly, iii. 252.

106 PP, 1816, (472), iv. 3-4/348-9.

creed. His complaint was that the bill was fundamentally unjust:

Here was fifteen millions of property
all taken from the profits of the
most honest, the most industrious,
the most laborious and the most moral
part of his majesty's subjects.
(Hear, hear!)¹⁰⁷

Waithman was defending his kith and kin; that he should be so defensive is an indication of the difference in mood from that of 1816. He pleaded that the membership of the Committee should include others than lawyers, who had little interest in the real needs of creditors. (It is curious that the old complaint by debtors that lawyers and creditors were in league was thus inverted.) Further appeals from creditors were organised by a "Mutual Communication Society for the Protection of Trade."¹⁰⁸ However a careful examination of the petitions on the subject reveals that at least a third were prepared to see the Court continue, as long as its constitution was reformed.¹⁰⁹ The Committee heard a large number of submissions, and presented its Report on 10 May. Its conclusion was:

to express the most decided approbation of the principle, on which they conceive the Laws for the Relief of Insolvent Debtors were founded. ... But it must be observed that ... the provisions of the law are so defective, and the practice of the Insolvent Debtors Court has been such, that in its practical operation it has hitherto been productive of considerable injustice and inconvenience.¹¹⁰

¹⁰⁷ PD, ser. 1. xxxix. 181.

¹⁰⁸ Cf. CJ, lxxiv. 194.

¹⁰⁹ Cf. ibid, 239, 254, 266, 270, etc.

¹¹⁰ "Report ... on Acts respecting Insolvent Debtors", PP, 1819, (287), ii. 3/324.

The Committee, which included Waithman, believed that alterations in the procedure of the Court could overcome previous problems. They felt that the new act should increase the number of Commissioners in the Court to three. This would enable closer examination of the debtor's honesty, and the debtor was to be required to produce a schedule of his property within fourteen days of his imprisonment.

This wise Report was largely the work of Viscount Althorp, the able and fairminded Whig who was later to be important in the reorganisation of his Party. Althorp promptly introduced a revised bill incorporating the Committee's recommendations on 20 May. Unfortunately this bill took a month to proceed through the Commons, and in the Lords opposition was so fierce, and time so short before the end of the session, that with the consent of Eldon, Redesdale, and Auckland, the bill was on 7 July voted down.¹¹¹

The Lords were quite prepared to temporarily continue the Redesdale Act, although there was a division in the Commons over this move. Before the revised act, (1 Geo. IV c.119), was finally passed, in the second session of 1821, there had been a brief interim in which the Insolvent Court had to be suspended because the act had expired. This brief period, when relations between debtors and creditors reverted to their basis before 1813, demonstrated how universal was revulsion now at the old law. In Althorp's comment, it was now unthinkable that the imprisonment of the debtor should be at the discretion

¹¹¹ PD, ser. 1. xl. 1557.

of the creditor.¹¹²

The reforms of these years did not abolish imprisonment for debt. But they challenged the fundamental principle of the old law - the absolute right of the creditor over his debtor's body. Changing this law was a slow process. A.V. Dicey characterized the period from 1800 to 1830 as a time of legislative quiescence, and although Henry Parris has challenged many aspects of Dicey's interpretation, he does not contest this one.¹¹³ This reform is an exception to that generalisation, but the generalisation helps to explain the fierce resistance that even so moderate a reform encountered.

Given the nature of the resistance it is perhaps surprising that the bill passed at all. Until 1821 traders were vociferously opposed to change, and their opposition was better organised than the reformers ever were. Despite this, Parliament acted to curtail the powers of creditors. In the Lords the reformers were an assortment of Whigs and Tories moved by paternalism and compassion. In the Commons law reformers, influenced by Bentham, though few in number exerted an influence. Above all, popular attitudes to imprisonment for debt eventually became Parliamentary attitudes. On the other hand, the Morality of Trade found few spokesmen in the House, with the exception of the most radical

¹¹² PD, ser. 2. i. 605.

¹¹³ H. Parris, Constitutional Bureaucracy, p. 262ff.

members who often owed their seats to the support of small traders, and of the more conservative members who would defend any aspect of the old law. Hence Trading Morality gave way to Humanity and Liberty, and the prison gates were eased open.

CHAPTER VREACHING A VERDICT

The Redesdale Act of 1813 set in motion a series of alterations to the debtor laws that gradually reduced imprisonment to a brief and relatively painless excursion to gaol. These changes diminished the effectiveness of such confinement as an inducement for the payment of debts. The changes did not destroy objections to the principle; indeed reformers became more absolute in their condemnation as peripheral abuses were removed. Thus the period till 1840 was characterised by increased public debate on the issue. Trading opinion found it had no chance of bringing about a return to the old law, and no satisfaction with the new, and its objections to further changes were less and less respected.

Yet the acts of 1838, 1842, and 1844 did not result solely from one political debate, and they were not Party policy as such, for the first act was passed when the Whigs were in power, and the others when the Tories were. Institutional and administrative problems greatly reinforced political motives. The whole field of mercantile law was under pressure in the early nineteenth century. There was a great increase in resort to law for the enforcement of contracts, and not just the recovery of debts from individuals. Indeed bailable process, (that is, arrest of the person on Mesne Process) accounted for only one-third of actions brought by creditors in the year 1813; and

serviceable procedure two-thirds.¹ Moreover the cumbersome nature of the procedures laid down in the Redesdale Act for the relief of debtors, itself necessitated further changes in the law.

THE TEMPLE TO SEEDINESS

The Court for the Relief of Insolvent Debtors, in Portugal Street Lincoln's Inn, had an unsavoury reputation. Charles Dickens in his first popular serialised novel described the Court as it was seen by contemporaries. Crowded with "destitute shabby-genteel" debtors, the "lofty room, ill-lighted and worse ventilated", smelt of beer and spirits. The attornies there were greasy and mildewed; the wigs of the barristers poorly powdered. It was, Dickens concluded, "a temple dedicated to the Genius of Seediness."²

The Court was the product of the 1813 Redesdale Act. Before 1813 release of debtors had been a responsibility of the Justices. After the passage of a temporary insolvent act, they used to hear petitions from large numbers of debtors. They proceeded with more haste than caution, and remands were probably few. The total cost of his release to the debtor was some two or three guineas including court costs.³ A

1 PP, 1831-2, (239), xxv. 12.

2 Dickens, Pickwick Papers, pp. 611-2.

3 W. Jones, Observations on the Insolvent Debtors Act, (1827), pp. 7-8.

permanent relief system would have overburdened the Justices, and therefore the 1813 act set up a Court. Also the permanent act was established not simply to clear the gaols, as its predecessors were, but also to provide selective relief for debtors willing to satisfy their creditors. Consequently a more professional administrative and investigating body was necessary.

The Court therefore housed a Commissioner, who heard petitions for relief, and assessed opposition from creditors. Responsible to him were assignees appointed for each prisoner, who supervised the equal distribution of assets to the creditors. The Commissioner could bring in a verdict of fraud or deceit, or concealment of assets, and remand such offenders for up to five years, unless their creditors subsequently released them.⁴ The Justices continued to perform some of these duties for county prisoners, to relieve the Commissioner, who was stationed in London.

There was a dramatic increase in the numbers of imprisoned debtors during the early period of the Court's existence. Although some observers blamed this increase on the economic crisis of the post-war years, it can be largely attributed to the legal changes, which aided the existing rise in debtor numbers. Indeed at least five percent of the increased committals were actually prisoners transferring by habeas corpus from country prisons to London, where the Court was near at hand.⁵ As has been shown,

4 53 Geo. III c. 102, ss. 1-ii, viii-x, xiii-xv.

5 PP, 1819, (287), ii. 178/498.

before 1813 the number of debtors was proportionate to the economic environment, but from 1813 to 1818, in four years this relationship was inverted.⁶ The period after 1811 was economically very unstable. Rostow recorded deep troughs in 1811 and 1816, and so perhaps the situation was too abnormal to conform to statistical predictions. Yet the existence of the Court does seem to have initially inclined creditors to imprison their clients in the hope of thus being paid, and in the longer term debtors were induced to seek arrest and subsequent relief as a solution to their financial troubles. As the Keeper of Lincoln Castle told the 1816 Parliamentary Committee:

Whenever we discharge a score, they only go and tell their necessitous neighbours the way in which they may obtain similar relief; and a great many are imprisoned at the suit of relations.⁷

Debtors began to seek a "friendly arrest" by arrangement with some "creditor" who was no creditor at all. In these circumstances, gaolers sensed that a far wider range of persons was now being imprisoned than had previously been the case, and these included many of the "humbler characters in life."⁸ By 1819 this trend was even more evident, and in consequence both the debts for which debtors were imprisoned and their capacity to pay had diminished. The Clerk of the Insolvency Court told the Parliamentary Committee in

6 Cf. Appendix Three.

7 PP, 1816, (472), iv. 58-9/402-3.

8 Ibid, p. 50/394.

that year that:

the greater body of persons who apply now under this act of parliament are certainly poorer than they used to be; their schedules contain⁹ much less both of debits and credits.

This is partly explained by the many cases where debtors "gave" their property to a relative to hold in trust while they were in prison, but the decrease in listed debts suggests that the increase in litigation to recover debts reached its nemesis with the advent of the Insolvent Debtors Court.

Complaints about the Court from traders led to statutory alterations to its powers and organisation. In an 1814 act, (54 Geo. III c. 23), the powers of the Court in the counties were more carefully defined, and the Quarter Sessions given some duties. In an 1816 act, (56 Geo. III c. 102), debtors "guilty of gross injustice toward their creditors" were made liable to severe punishment by the Court. The problem of debtors who were distant from London troubled the Court officials. When the Redesdale Act expired in 1819, the new act, (1 Geo. IV c.119), increased the number of Commissioners to three, two of whom were to itinerate separately through the counties. Not every Member of the House of Commons wanted a larger Court of this kind, with the expense it entailed,¹⁰ but efficiency triumphed over economy, and the machinery of the Court was enlarged.

9 PP, 1819, (287), ii. 56/376.

10 PD, ser. 2. i. 868-9.

The same need led to further Government legislation in 1822, (3 Geo. IV c. 123), and 1824, (5 Geo. IV c. 61), which amended the main act. The former statute established a Provisional Assignee as an employee of the Court, empowered to receive the property of debtors. The right of the Court to invest unclaimed money was acknowledged, and it was permitted to build a court-house in London. The latter act abolished all the powers of the Justices in insolvency cases, and instead appointed Examiners in every county, who were to scrutinise petitions and advise the Commissioner when he arrived to hear the cases. Thus the Court grew larger.

In 1826 when the main act again expired, further revisions were made to it. The new statute, (7 Geo. IV c. 57), consolidated the experience of previous years. It also allowed debtors to seek relief immediately after they entered the prison, instead of waiting three months. This act was subsequently renewed with few changes in 1830, (11 Geo. IV c. 38), in 1832, (2 Will. IV c. 44), and in 1837, (6 & 7 Will. IV c. 44). By 1837 the Court was an institution, the powers of which had grown greatly, as had its staff. The Court was therefore a candidate for what Oliver MacDonagh has called "an administrative or governmental revolution."¹¹

Insolvency legislation can be explained to fit MacDonagh's thesis that there is a "model" for the growth of Government Offices, with their expanding

11 O. MacDonagh, "The Nineteenth Century Revolution in Government", Historical Journal, i. (1958). 52.

competence and sphere of interest. Admittedly the "first stage" of his model, which is the realisation of a social evil and first legislation, would have to be dated earlier than in his examples, for such legislation for the relief of insolvent debtors was passed in the eighteenth century. However it was not until the nineteenth century that the second stage; the realisation that previous legislation was inadequate, and the third stage; the appointment of executive officers in an Insolvent Debtors Court, took place. This suggests that the nineteenth century did indeed see revolutionary new patterns of government. Only in the nineteenth century was a permanent relief system administered by Government officials advocated for debtors. Redesdale's Act, though it only slipped through Parliament, began efficient control of the problem.

MacDonagh's fourth stage, where a central body is established and proceeds to formulate its own regulations and legislation, and his fifth stage of consolidating legislation and a self-sustaining bureaucracy, both fit insolvency legislation well. The increased number of Commissioners, and the appointment of Examiners, enabled greater centralisation; the 1826 consolidating act with its extended powers and reduced period of imprisonment shows the legislative aspect, and thus MacDonagh's model is vindicated.¹² Moreover the same period saw an

¹² For all the above, cf. ibid, pp. 58-61.

extension of the new law to Ireland. After 1801, Irish insolvency bills had normally accompanied those for England through the House. The 1813 Redesdale Act was modified in a statute of 1814, (53 Geo. III c. 138), for Irish debtors, although rather than set up a new court, it operated through the Irish assizes. In 1821 however, an Insolvency Court was set up in Ireland, (1&2 Geo. IV c. 59), and thereafter English legislation was quickly duplicated for Ireland. Thus the nineteenth century revolution in government saw greater uniformity introduced into the administration of debtor relief throughout the United Kingdom, for the reforms brought English practice nearer that of Scotland.

Nevertheless the administrative development of the Insolvent Debtors Court was not always straightforward. And although the purpose of MacDonagh's model is to explain the development of administration apart from the social philosophies in vogue at the time, the development of the Court was not determined solely by the pragmatic decisions and regulations of the officers of the Court. Instead, the Court remained the subject of controversy, and in 1838 and 1842 its area of administrative duties was sharply curtailed. These changes were the result of a publicity campaign, and of Radical Utilitarian pressure in Parliament concerning the whole basis of debtor legislation. Their effect was a new cycle of administrative developments directed from the Bankruptcy Court, and not the Court in Portugal Street.

Thus there is one weakness of the MacDonagh model in this case. It succeeds in organising administrative developments into a pattern, but, as Henry Parris has commented,¹³ it leaves no room for the influence of public opinion, especially of the Benthamite variety. In this case public opinion mainly influenced the Court from outside, for it commented on the general question of the rights of debtors. But it seems also true that the comprehensive aims of the officers of the Court were natural only because of the prevalent concept of efficient government.

Unlike the examples MacDonagh cites, the problem of debtor relief was not a product of the Industrial Revolution. It was a much older problem than this, and the basis of the nineteenth century answer to it was two-fold. Firstly there was the number of debtors involved. A tremendous rise in the number of committals for debt in the first decade of the century forced Parliament either to face passing annual temporary insolvency acts, or to pass a permanent act. That the latter was passed, despite strong opposition, is a sign of the second aspect of the basis. This was the interest of the Commons and the Lords in "permanent" solutions to social problems. These two factors continued to affect the Court, and cause its expansion, elaboration, and finally its dissolution! Table Six indicates the changing amount

¹³ H. Parris, Constitutional Bureaucracy, p. 268ff.

business in the Court:

TABLE SIX
PETITIONS BY INSOLVENT DEBTORS
TO THE COURT, 1813-1846.¹⁴

1813	1447	1830	5185
1814	2464	1831	5261
1815	3344	1832	5535
1816	4060	1833	5086
1817	3970	1834	5116
1818	3909	1835	4624
1819	3919	1836	4757
1820	5183	1837	5206
1821	5611	1838	5254
1822	5587	1839	3076
1823	4738	1840	4667
1824	4503	1841	5103
1825	4309	1842	5352
1826	4490	1843	4461
1827	5665	1844	2905
1828	4571	1845	1292
1829	5117	1846	1461

The number of debtors seeking relief through the Court rose until 1821, but thereafter stabilised. After 1838 a series of bills progressively stripped the Court of its clientele. Within those years 1813 to 1838, the Court in Portugal Street attracted many comments, most of them unfavourable, both from supporters and opponents of change.¹⁵ At issue were the powers of the Court and the justice of its procedure. Its attornies, its fees, its remands and its distribution of property to creditors were all disputed.

¹⁴ PP, 1847-8, (120), li. 172.

¹⁵ Cf. PP, 1831-2, (239), xxv. 54.

The first Commissioner of the Court was Arthur Palmer. His administration appears to have been dilatory, and by the time of his death in April 1815 there was a long backlog of petitions. His successor, appointed in June of that year, was Charles Runnington, and he took a casual attitude to his duties, rarely willing to remand debtors at the instance of creditors.¹⁶ Runnington instituted a scale of fees, which were the subject of sharp criticism from the Select Committee of the House of Commons in 1819. "The Commissioner did not state any particular inconvenience to have occurred during the time of his predecessor from such fees not having been established", they noted, and contrasted his allegation that the fees were necessary to supplement the salary of the Chief Clerk with the fact that "a considerable share of them he has appropriated to himself". Runnington was paid a salary of £2000 per year, which the minimum fees of £1.5s per debtor handsomely supplemented.¹⁷ The Commissioner defended the fees as necessary to control proceedings in the Court.¹⁸ He was eventually relieved of his post.

A scale of fees, albeit reduced, remained after his departure, and remained contentious. A further much criticised fee was added; it was paid to the Provisional Assignee for witnessing the debtor's

16 Cf. PP, 1819, (287), ii. 153/473.

17 Ibid, pp. 5-6/325-6.

18 Ibid, p. 148/468.

schedule. One commentator set the total expenses of relief, including lawyers' fees, at £25.¹⁹ This estimate was probably too high, but the 1831 Royal Commission estimated costs of £10 per debtor, and popular writers complained that they were excessive.²⁰ In 1827 the issue of fees was aired in an exchange of pamphlets between the Marshal of King's Bench prison, William Jones (who had his own reasons for wanting the gaols to be full), and Henry Dance who was the capable Provisional Assignee of the Court. Jones, distrustful of any new-fangled administrative revolution, claimed that the Insolvency Court existed only to make profits from debtors, and should be abolished.²¹ Henry Dance insisted that Jones exaggerated the fees, and claimed that the Commissioners were eager to reform the procedures of the Court.²²

This dispute was really about the revolution in the administration of debtor relief and its motives. Associated with it were complaints about the new breed of agents who represented the debtors in the Court. Jones called them "harpies", who charged £6 even to consider a case, and he estimated that there were five or six hundred of them.²³ Certainly the 1819 Committee had expressed doubts about the agents. Most of them

19 W. Jones, Observations on the Insolvent Debtors Act, pp. 9-12; cf. "Imprisonment for Debt", Broadway, ii. (1869). 310-1.

20 PP, 1831-2, (239), xxv. 60. Runnymede Secundus, The Prison House Unmasked, (1837), p. 27; R. Gordon, A Letter to Viscount Melbourne, (1836), p. 35.

21 W. Jones, pp. 15-16.

22 H. Dance, A Letter to William Jones Esq., pp. 5, 12.

23 W. Jones, p. 8.

had no legal training but were themselves discharged insolvents.²⁴ The trained attornies who did act as agents constantly agitated to have all others excluded from the Court. They blamed on other agents all the grievances of the insolvents. While such "low attornies" dominated the Court, few qualified lawyers would enter it. However, it required little legal expertise to represent a debtor in Court, and remands were for such vague offences as "gross injustice to creditors". Besides this, regular attornies thought it "not respectable" to visit the debtor prisons to solicit cases and prepare schedules.²⁵

Dickens had a low opinion of the attornies in the Insolvent Debtors Court.²⁶ He also felt that the Court could scarcely be expected to fairly determine the guilt or innocence of a debtor. Many other observers felt that this was a chief fault of the Court. It had so many petty rules and requirements that it would be impossible for a debtor to prepare the required schedule of his debts and property to the Court's satisfaction, unless he kept an hourly diary: "It is hardly possible for any Insolvent to take the benefit of it, without being guilty of perjury."²⁷ Meanwhile the Court failed to detect serious offenders

24 PP, 1819, (287), ii. 183/503.

25 Ibid, pp. 31-3/352-4, 40-2/361-3, 51-3/372-4.

26 Dickens, Pickwick Papers, p. 612.

27 W. Jones, p. 21. Cf. H. Jemmett, A Letter to ... Peel, p. 16; R. Gordon, p. 37.

who had obtained credit through fraud, or who had concealed their property. Between 1813 and 1817, 8634 debtors were discharged and only 412 were remanded. Embezzlement and undue preference to one creditor were among the main causes for remand, and no-one was remanded for not paying Court fees, despite allegations of this.²⁸ Over the years about five percent of petitioning debtors were remanded, and the average remand was for six months.²⁹

These statistics provide little ground for criticism of the Court, but they fail to show what is revealed by other figures; that few creditors were successful in opposing the discharge of their debtors. Some Credit Associations were eventually set up to organise opposition to the release of the fraudulent, but their efforts seem to have been largely wasted. Consequently many traders refused to waste their money on defending their rightful interests in the Court.³⁰ They only grumbled when the Court failed to use its own initiative in remanding. In effect the Court simply absolved petitioners of their debts.³¹

28 PP, 1819, (413), xvi. 89.

29 PP, 1822, (276), xxii. 322-3.

30 PP, 1816, (472), iv. 67/411; ibid, 1823, (187), xv. 207; J.H. Elliott, Credit the Life of Commerce, p. 62.

31 "Imprisonment for Debt and the Insolvent Debtors Court", Fraser's Magazine, ix. (1834). 649; Article IV, British and Foreign Review, v. (1837). 86; Imprisonment for Debts Bill: Two Sides, (1837), p. 8.

Discharge through the Insolvency Court did not end liability for debts in the sight of the law, but it did reduce the power of the creditor to force his debtor to pay. And thus the Court was anomalous in concept. Why should only the debtors who petitioned the Court for relief be punishable for fraud? What of the fraudulent debtor who chose to remain in the liberty of the Rules, and not seek relief?³² And why should the Court be empowered to sentence a man to three years' imprisonment without the aid of a jury and without right of appeal?³³

All these faults which traders saw in the Court faded before one more monstrous than the rest. The Insolvency Court was supposed to discharge debtors when they surrendered their assets for distribution to their creditors. In fact creditors very rarely received any composition from the Court. Till 1817, of the £8,863,969.13s.4d owed by the 8634 debtors who had been discharged, only £4,788.12s.7d had been received to be distributed to creditors.³⁴ Despite later amendments to the machinery of the Court which were designed to ensure the seizure of the debtor's property, even in its best year the Court received an average of only £4 in property from each debtor. Most of those who petitioned for relief declared on their schedules that they possessed no property beyond the

32 Article III, Westminster Review, ix. (1828). 60.

33 R. Gordon, pp. 39-40.

34 PP, 1817, (138), xvi. 91.

personal effects they were permitted. When property was admitted, administrative costs were deducted by the Court before creditors received anything.

Mercantile opinion regarded the minuteness of this dividend as a scandal. Alderman Thompson told the Commons that if this continued, traders would soon be absolutely ruined.³⁵ Others complained that they scarcely received a farthing in the pound.³⁶ They demanded that the law should be reformed, so that the debtor's property could be seized as soon as he entered the gaol, giving him no time to conceal it. Many wished to make the duration of the confinement of the debtor proportionate to the extent of his debts that he was able to pay. Proportionate imprisonment became a favourite suggestion of many mercantile commentators. In the Commons Henry Bright, and also D.W. Harvey of Colchester and later Southwark, advocated it.³⁷ Traders were convinced that this would force the debtor to pay, or else make him more cautious in buying on credit. Even a member of the Thatched House Society advocated such a proposal, but in his version the period of imprisonment was also graduated against the amount of the debt.³⁸

35 PD, ser. 3. xxiv. 229.

36 Runnymede Secundus, The Prison House Unmasked, p. 26; B. Hawes, The Abolition of Arrest and Imprisonment for Debt Considered, (1836), p. 34.

37 PD, ser. 2. viii. 612; ibid, xxiv. 233.

38 PP, 1819, (287), ii. 36/356; cf. Imprisonment for Debts Bill: Two Sides, p. 14.

That trading opinion should be bitter about the Insolvent Debtors Court is understandable. By providing a summary procedure which relieved debtors after only a short confinement in gaol, the Court reduced the coercive power of the old law, without also criminally prosecuting the fraudulent. However the traders tended to idealise the old law, and ignored the disruptive effect of temporary insolvent acts. Traders were also wrong to conclude that debtors must have been wasting their property in prison, or concealing it, for dividends to be so low. At least half of the debtors who were confined never went through the Court, for they were able to offer their creditors acceptable compositions. ("Acceptable" meant as low as five shillings in the pounds.) The insolvents who did petition the Court were naturally those who had so few assets that they were unable to offer acceptable compositions to their creditors.³⁹ It seems probable that the Assignee and Examiners of the Court were as effective as could reasonably have been expected in securing property. The interests of creditors were probably far better guarded by the Court than by the old law.

If the traders disliked the Court, so too did debtors and popular opinion. Reformers accepted the need for such a Court, but they did not like the actual Court which tried to meet those needs.⁴⁰ The Court

39 Cf. PP, 1831-2, (239), xxv. 54.

40 Cf. H. Jemmett, p. 25ff.

was "looked on with abhorrence and disgust" by popular writers, who always sympathised with debtors, and it was attacked by the Press, except for The Times.⁴¹

Mr Dease told the Commons that the Court was "so odious that he should willingly support any measure which would have the effect of getting rid of it forever."⁴²

Some of its victims were willing to compare the Court to the Star Chamber of Stuart England, and there was little understanding of the reasons for its

establishment. In 1833 the Solicitor General was forced to admit that the Court "has, without reason, become exceedingly unpopular in this country."⁴³

In Parliament, however, opinion was more evenly divided.

Peter Moore declared that two hundred Committees on the Insolvent Debtors Act had been unable to remedy its evils.⁴⁴ He, like many representatives for

boroughs, repeated the fears of traders that the act had relaxed "the stern principles of commercial morality."⁴⁵ Yet Peel, who was not aloof to the

interests of the commercial community, declared that:

"he really was not prepared to alter, off-hand, the most important laws of the country"⁴⁶ meaning the laws of debtor-creditor relations. Peel in the late eighteen-twenties introduced or supported a number of bills seeking to establish a more efficient system

41 British and Foreign Review, v. (1837). 86;
Imprisonment for Debts Bill: Two Sides, p. 14;
J.H. Elliott, Credit the Life of Commerce, p.v.

42 PD, ser. 3. xxvi. 570.

43 Ibid, xviii. 788.

44 Ibid, ser. 2. viii. 609.

45 J.H. Elliott, A Remonstrance addressed to Lord Brougham, (1838), p.11.

46 PD, ser. 3. i. 129.

of small debtor courts, but in 1838 he opposed the abolition of Mesne Process arrest.⁴⁷ There may have been some Tory opposition to the establishment of the Insolvency Court, but many Tories came to regard it as the only acceptable kind of reform.

The Court in Portugal Street was an institution that relieved debtors from prison rather than prevented their entry to prison. It therefore reduced the call for the older philanthropic institutions while not completely eliminating their function. The Thatched House Society continued for many years to provide relief for honest debtors who owed only small amounts, and whose unfortunate circumstances were proven to the Society's satisfaction. Representatives of the Society feared that the Insolvent Debtors Court, which did not place such a high priority on honesty, had made many debtors less willing to pay their debts, and less honest also.⁴⁸ No longer were many debtors desirous or deserving of the Society's help, and the Society simply assisted those that were through the Insolvency Court.⁴⁹ Over the fifty-seven years of its existence until 1829 the Society had relieved 43,390 debtors at a total cost of £147,000,⁵⁰ but in the period after 1813 its beneficiaries may well have been largely Court of Requests prisoners, who were not eligible for relief

47 Ibid, ser. 2. xix. 433-4; ibid, ser. 3. xxvii. 1054.

48 PP, 1816, (472), iv. 62/406; ibid, 1819, (287), ii. 36/356.

49 Ibid, 1816, (472), iv. 62/406; ibid, 1819, (287), ii. 13/333, 19/339.

50 Cited in PD, ser. 2. xx. 443. But cf. J. Wade, A Treatise on the Police and Crimes of the Metropolis, pp. 132-3.

by the Insolvency Court. By 1840 the Society appears to have been defunct, for its existence was not recorded in the Index to the Reports of the Charity Commissioners. One Debtor-Creditor Guide listed the Insolvency Court in pride of place among the philanthropic organisations concerned with debtors,⁵¹ and with such competition it is little wonder that the Thatched House Society declined.

The Insolvent Debtors Court had turned compassion into a business, which like every Government-run business desired a monopoly. The structure of the Court was apparently thought well suited to commercial practice, for in 1831 the old system of administering bankruptcies by Commissioners and Chancery was replaced by a Bankruptcy Court. This new Court, with its structure of Commissioners and Accountants was almost certainly modelled on the Insolvency Court.⁵² In later years the close relationship of the business of these Courts was realised by the Legislature, and in 1842 the Bankruptcy Court was assigned some responsibilities relating to insolvent debtors. In 1861 it absorbed the Court for the Relief of Insolvent Debtors altogether. The reproduction was more admired and respected than the original.⁵³

51 Debtor and Creditor's Guide, (1825), p. 28.

52 Article IV, British and Foreign Review, xvi. (1844), 125; C. Fane, A Letter, (1838), pp. 6-7.

53 On bankruptcy reform, cf. Select Essays in Anglo-American Legal History, pp. 545-8.

THE ABOLITION OF MESNE PROCESS IMPRISONMENT

In 1838 Parliament passed a bill to abolish arrest on Mesne Process, only reserving the procedure to the discretion of Judges. This measure succeeded because there was no direct conflict between the old law and the reform proposals. Because the Insolvency Court already provided relief for those who were imprisoned for debt, Mesne Process arrest was no longer such an effective incentive for the payment of debts. The Legislature had already recognised the right of debtors to be speedily released from gaol; it seemed a small step to curtail the right to imprison.

Consequently there was no direct Party struggle over the issue of reform. Even Lord Eldon was quoted in condemnation of the power of arrest, which he called "permission to tear a father from his weeping children, the husband from the distressed wife, and to hurry him to a dungeon, to linger out a life of pain and misery."⁵⁴ If in retrospect Eldon condemned the old law, then Tory opposition to reform was not inevitable. Indeed in the eighteen-twenties many reformers looked to Peel for leadership. Henry Jemmett addressed his comments to Peel, on the basis of his "known liberality of mind" and his support for Scriptural principles.⁵⁵ Peel disappointed these hopes. His only interest was in small debtor courts,

⁵⁴ Quoted by Fraser's Magazine, xvii. (1838), 174; cf. PD, ser. 3. xxvi. 1165.

⁵⁵ Jemmett, p. 4.

and he strongly objected to the total abolition of imprisonment for debt.⁵⁶ But he and other opponents emphasised their sympathy for debtors, instead of advancing only the interests of traders.

The case for reform, as stated by nineteenth century Radicals, had evolved some distance from eighteenth century arguments. There was inevitably less stress on the sufferings of debtors. Henry Thornton's 1813 act had greatly reduced the likelihood of debtors starving in gaol. Only the emotions and the reputations of debtors were now vulnerable. Their worst dangers were those of inebriation, moral corruption and family distress. "Thousands are broken down in mind under these oppressive legal proceedings", declared a writer in Fraser's Magazine,⁵⁷ but he apparently knew none broken down in body. It is significant that reform was sought on principle, and not simply because of the sufferings the system caused. Eighteenth century philanthropy had sought to remedy sufferings within the existing structures of society. In this they succeeded, but in the process demands to alter the structures themselves were aroused.

In part traders joined in this cry. They wanted more recourse to the property of the debtor, and criminal prosecution for the fraudulent. Traders and reformers essentially differed over the empirical issue of whether most debtors had been unable to pay

56 Cf. also PD, ser. 2. xvii. 231-2.

57 Loc. cit., ix. (1834), 653.

the debt when it was contracted, or whether subsequent unfortunate circumstances had caused this. The trader, assuming the former, wanted to inculcate in the debtor shame at his wickedness;⁵⁸ the reformer, assuming the latter, was shocked that traders could imprison unfortunate men.

J.R. McCulloch, the author of the popular Commercial Dictionary, supported the abolition of imprisonment for debt,⁵⁹ but he was more of a humanitarian than many economists of the period, and was criticised for his attitude. In general the literature of reform adopted a different attitude to commercial obligations than that taken by the traders. This theme had eighteenth century precedents; but another traditional theme, criticism of the harshness of lawyers, had now evaporated. In the nineteenth century reform was promoted by lawyers in legal terminology. There were still a few complaints at lawyers who used the law to harm the interests of debtors, but virulent attacks on lawyers are only to be found in the writings of traders.⁶⁰ The commercial classes were the only remaining defenders of the old law, and they in themselves had not the influence to defeat the measure.

58 Cf. PP, 1816, (472), iv. 36/380.

59 Quoted by Elliott, Credit the Life of Commerce, p. 19. Cf. D.P. O'Brien, J.R. McCulloch. A Study in Classical Economics, p. 330.

60 Cf. Elliott, p. 187.

The movement to abolish imprisonment for debt was in some senses a campaign against the rights of traders to determine their own mercantile law, and it was more influenced by European examples than trading opinion. Reformers cited the examples of Scotland, Portugal, France, and the United States, where there had been recent changes in insolvency law. English use of arrest for debt was, in the words of a Benthamite observer, "a greater hardship than was to be found in any christian or heathen country."⁶¹ Foreign influence may well have had more influence on many English reforms than is usually allowed.

The constitutional rights of the debtor were still stressed by nineteenth century reformers. These rights were derived from the principles of Liberty and Equality. The Law was old and archaic and therefore the time to alter it had arrived. The argument from Magna Carta so beloved to the eighteenth century reformer was now too conservative a basis on which to promote change.

Such generalisations serve the most prominent part of the nineteenth century literature of reform. Close scrutiny reveals the existence of a less articulate group of reformers, who revived and continued eighteenth century arguments which others dismissed as

61 Westminster Review, ix. (1828), 55. Cf. British and Foreign Review, v. (1837), 79-80; PP, 1831-2, (239), xxv. 55ff, L. Leone "On the Abolition of Imprisonment for Debt", (1874), p. 310.

antiquated. For example, a writer in Fraser's Magazine in 1838 mounted an attack on both the debtor laws and the Whigs. He wrote:

Every true Conservative must feel his honour 'concerned for Magna Charta and the laws' and by firmly demanding that it be forthwith restored in its purity, a new era in legislation will be established, by which every proposed enactment will be referred to principle; it will constitute an impenetrable bulwark against headlong republican reform.⁶²

Reform, for this writer, was only a return to the ancient law. It was a curious argument, very similar in logic to the comments of "Runnymede Secundus", who, as his name implies, regarded Magna Carta as the Constitution of England. Runnymede called himself a "follower of Bentham", but his descriptions of the sufferings of debtors, and his condemnation of the Rich and the Papists are quite unlike the practical emphasis of Benthamite arguments.⁶³ Runnymede looked to the Queen, the Church, and the Constitution. Although he mentioned the Insolvency Court, his real argument was based on humanitarian grounds. In many senses it was an extension of the earlier Evangelical arguments, and indeed another example of such criticism of the laws can be cited from a Victorian evangelistic magazine, and still others from Tory journals.⁶⁴

62 Loc. cit., xvii. (1838), 186.

63 Runnymede Secundus, Magna Charta [shown to have been Violated] (1837), p. 1.

64 "The Cork Literary Victim of Imprisonment for Debt", Mariners Church Gospel Temperance Soldiers and Sailors Magazine, ii. 3. (1844), 153ff; Cf. "On Imprisonment for debt" GM, xci. (1821), pt. 1. 589-590.

Most of those who published arguments for reform in the nineteenth century were intellectuals of the Radical party. The Westminster Review in 1828 declared itself on the issue; it went further than Bentham in proposing the entire abolition of the practice.⁶⁵ Abolition was a minor part of the Radical programme. Runnymede Secundus and his friends were very suspicious of such advocates of "republican reform". They thought that there was an alliance between Radicalism and Trade and that there could be no sincere desire for reform from such a group. And indeed the Radicals were divided over the question. J.S. Mill in 1848 complained that reform of the debtor laws was "an affair of humanity only, not of justice",⁶⁶ and such belated complaints seem to have had sufficient precursors to make those who used traditional arguments doubt if the Radicals cared about the common man.

In actual fact the campaign to abolish the practice was won over the legal issue used by Radicals, and not over the traditional arguments. All of Runnymede's descriptions of the horrors of imprisonment, ("a refinement of cruelty exceeding the ingenuity in torturing of a New Zealand savage"⁶⁷), had no effect, compared to the legal arguments of Brougham. And it was Brougham, not Peel, who sponsored

65 Loc. cit., ix. (1828), 68.

66 J.S. Mill, Principles of Political Economy, p. 907.

67 Runnymede, The Prison House Unmasked, p. 28.

the reform. The campaign Brougham mounted attacked a legal sub-division of the debtor law: arrest on Mesne Process.

The demand for the abolition of arrest on Mesne Process was first voiced in Parliament one year after the passage of the Redesdale Act. In 1814 a petition by Matthew Stott was presented:

praying that an Act may pass to
abolish forever by Law Imprisonment
for Debt on Mesne Process, or that
some check may be put to the exist-
ing power of the fictitious creditor,
by means of which the civil liberty
of the subject may be most grossly
violated.⁶⁸

A series of similar petitions followed during that session. In the Lords they were taken up by Stanhope, who suddenly demanded total reform. He declared that justice was sold in England, and that "the too great increase in credit was one of the greatest curses" of the country.⁶⁹ Stanhope and the petitioners mistakenly thought that the Redesdale Act indicated Parliamentary readiness to rewrite the debtor laws. But Stanhope in the Lords and Sir Francis Burdett in the Commons were the sole advocates of such a move, the unpopularity of which was evident in the reaction of the Lords to Stanhope's bill.

In the public mind, reform of Mesne Process was seen as an important goal. It proved easier to argue that arrest should not be allowed without court

⁶⁸ CJ, lxix. 330.

⁶⁹ PD, ser. 1. xxvii. 420.

approval than to demand an end to imprisonment on execution. All reputable political economists thought that the law should enforce contracts, but the plaintiff might use Mesne Process arrest when no contract had ever existed.

Thus in 1838 the Lords' Committee deleted the section abolishing imprisonment on execution from Cottenham's bill, but passed the remainder which abolished arrest on Mesne Process. The campaign had really only stressed the latter aspect. Among the lower orders, criticism of Mesne Process imprisonment was spread by John Wade, in his notorious Black Book and later works. Wade, a journalist who had co-operated with Joseph Hume, found a great deal to criticise in the state of English society, and the law of arrest was not lowest on his list. He described it as an attorney's plot, and he encouraged debtors to take revenge on their creditors by various legal expedients.⁷⁰

If Wade persuaded the lower orders, then Brougham in his speech of 7 February 1828 persuaded Parliament. Brougham's subject was the Courts of Common Law, and he outlined all the illogicitities and absurdities of the Common Law in his five hour address. In his discussion of the debtor laws, he argued that imprisonment should only be allowed when criminal or fraudulent acts were involved.⁷¹ The Commission that was formed

70 J. Wade, The Extraordinary Black Book, (1831), pp. 263-5; A Treatise on the Police and Crimes of the Metropolis, pp. 119-434.

71 PD, ser. 2, xviii. 234, 192-4. Cf. C. New, The Life of Henry Brougham, i. 397-8.

to consider the subject matter of his speech reached similar conclusions.

Brougham's great speech aroused political interest in the administration of the civil law, but it must be seen in context. It was not the first occasion on which these abuses had been drawn to the attention of the House. Like the debtor laws, the other subjects of Brougham's speech had been discussed separately on other occasions. His achievement was to make the House consider them as aspects of one problem. A year prior to this speech, on 3 April 1827, Joseph Hume, another Utilitarian Radical, had proposed the abolition of arrest on Mesne Process, and asked that a Select Committee investigate the problem.⁷² He was seconded by Hobhouse, another Benthamite, and member for Westminster, who had condemned the law in the House in 1823.⁷³ When they were rebuffed, Hume introduced a bill co-sponsored by Brougham and Kennedy which would have replaced Mesne Process arrest by the use of a serviceable writ on the authority of a judge. Arrest would only be permitted by the judge if the flight of the debtor was anticipated. More effective processes against the debtor's property were to secure it for the creditor after a few months, and imprisonment on execution would only occur if the debtor prevented the seizure of this property.⁷⁴ This may be taken as

72 PD, ser. 2. xvii. 223-8.

73 Ibid, ix. 376.

74 PP, 1826-7, (357), ii. 55.

the Radical formula for reform, which also emulated Scottish laws fairly closely.

In the upshot an act was passed that session curtailing the power to arrest, although Hume cannot alone be credited for it. For when the House came to examine Hume's bill it was found that the act passed in 1811 to limit Mesne Process arrest for debts over £15 had expired unnoticed in 1824. Therefore only debts under £10 were now immune. Peel had been only willing to offer Hume an inquiry into the state of the debtor prisons, but this discovery forced him to admit the need for legislation.⁷⁵ At this very time negotiations were continuing for the formation of the Canning Ministry. The responsibilities of Attorney General were passed from the Tory Sir Charles Wetherell to Sir James Scarlett, a Whig, who was personally willing to ban all arrests below £100.⁷⁶ The new Ministry, in an attempt to appease liberal opinion, introduced a bill limiting the power of arrest to debts of £20 and above. (7 & 8 Geo. IV c. 71.) There was general satisfaction at what was described (inaccurately) as a compensation for inflation. Only the Westminster Review was unhappy, for it preferred Hume's bill.⁷⁷

The attitude of the Radicals was thought unrealistic by many political observers. Wetherell

75 PD, ser. 2. xvii. 231, 233.

76 Ibid, xvii. 1131.

77 Loc. cit., ix. (1828), 62. The post-1815 price index is debatable, but probably declined.

declared that no person involved in trade would tolerate Hume's bill,⁷⁸ and others agreed. The Radicals had their own information about trading opinion. They knew traders who doubted the effectiveness of the existing powers of arrest, and who were prepared to have such powers curtailed in exchange for easier execution against property, such as Hume's bill offered. Hobhouse had in 1823 presented a petition to the House from two or three thousand "respectable tradesmen" of Westminster, praying that the insolvency laws be assimilated into the bankruptcy act.⁷⁹ It was a foretaste of changing attitudes.

The felt ineffectiveness of arrest helped the Radicals to justify their attitude to the many traders in their constituencies. Brougham himself, in his attitude to Orders-in-Council and the Property Tax and his demand in 1812 for a Select Committee on the State of Trade, had sought the favour of traders, and liberal opinion was very much strengthened by support from urban merchants and bankers. The Radicals hoped to avoid losing this support by stressing the creditor's need for new laws, but such policies were still far more acceptable to the lower orders, and the Tories were more responsive to trading opinion. The Radicals were not primarily concerned to appease constituents. Beginning with a Utilitarian philosophy that the law needed to be remoulded to better provide for the needs of society, they believed that when the

78 PD, ser. 2. xvii. 230.

79 Ibid, ix. 376.

new laws were in operation the traders would then accept them. The reforming Royal Commissions of the first half of the nineteenth century shared such goals, and consequently Brougham's Commission on the Common Law Courts was a powerful advocate for radical reform of the debtor laws.

The Commission met for four years from 1829, and produced five reports, of which the first and fourth dealt with civil imprisonment, and the fifth with the Courts of Requests. The Commissioners were largely lawyers who accepted the need for reform. J. Frederick Pollock was destined to be a great judge and a Tory member of the Commons. Thomas Starkie and William Wightman were both well-born, and both were technical experts in the processes of law. Henry J. Stephen had already made a reputation as an expert on Pleading.⁸⁰ Less is known of the other Commissioners.

Their first report dealt with the procedures of the Common Law, and avoided much discussion of insolvency procedures because they were not simply legal formulae but also matters of commercial policy. As legal processes alone they were surely unsatisfactory, for the Commission estimated that only one third of all writs of capias ever resulted in arrest.⁸¹

80 Pollock, DNB, xvi. 68; Starkie, ibid, xviii. 997; Wightman, ibid, xxi. 196; Stephen, ibid, xviii. 1047.

81 First Report of the Commissioners, PP, 1829, (46), ix. 71.

By the time the Commissioners had completed their third report, Brougham was Lord Chancellor in the new Whig administration. Perhaps at his volition they next turned their attention to imprisonment for debt, thus submitting the practice to the kind of investigation Hume had requested in 1827. They found it very difficult to reach definite conclusions. The fourth report offered a closely reasoned argument that, other than for fraudulent or absconding debtors, "imprisonment for debt is neither warranted in principle, nor beneficial in practice."⁸² But such conclusions were reached only at the expense of the unanimity of the Commissioners. Appended to the report was a thirty page defence of the existing law by Henry J. Stephen.

The Commission took the unusual step of seeking the written opinions of large numbers of qualified persons as well as hearing witnesses. They submitted one list of eighteen questions to more than three hundred bankers, merchants, and shopkeepers, and another list of thirty-two questions to many lawyers. Foreign ambassadors were also called before it to describe their laws, which were so often cited by reformers. The Commission found that most merchants defended their right to arrest debtors, but small traders made far more use of Mesne Process, and it was they who were most unhappy with the Insolvency Court. Bankers and large merchants, in contrast,

82 Fourth Report of the Commissioners, PP, 1831-2, (239), xxv. 44.

tended to doubt the utility of arrest in most cases. The Commissioners agreed with the bankers, not the shopkeepers.⁸³ They recommended the abolition of all imprisonment for debt, and its replacement by simpler processes against property.

These conclusions, as critics pointed out, arose not so much from the evidence as from the Utilitarian principles of the Commissioners. The report stated:

We know not on what sound principle a law can be justified which sanctions injustice to some for the sake of benefit to others, or how any law can be deemed to be expedient which is founded on the direct violation of several of the plain and elementary rules of justice.⁸⁴

They judged the law by the absolutes of equality and utility. Such powerful reasoning by Benthamites was, as Parris thought, far more important than pragmatic institutional growth in helping the debtors' lot. Henry Stephen dissented from the Report because he worked from different principles. To him it was sufficient justification for the law that the traders supported it. It was the responsibility of the law to defend the "sacredness" of contracts. Certainly the debtors needed protection, but he thought that this was readily- perhaps too readily - available through the Court of Insolvent Debtors. He agreed with the recommendations of the other Commissioners that easier

83 Ibid, pp. 11, 12, 19. Cf. Tighe, Imprisonment for Debt, reviewed by GM, cii. (1832), pt 2. 157.

84 PP, 1831-2, (239), xxv. 31. Cf. Fraser's Magazine, xvii. (1838), 187.

access was needed to the debtor's property, but he wanted to maintain the power of arrest.⁸⁵

Stephens' ardently worded defence achieved a popularity among traders that nobody accorded to the majority report. When Benjamin Hawes wrote in favour of abolition in 1836, he found it necessary to specifically rebut Stephens' arguments, and so did the Commission which reported in 1840.⁸⁶ Traders seem to have been looking for spokesmen for their interests. In 1831, while the Commission had been sitting, William Best, that old opponent of debtors, introduced a "Frauds on Creditors" bill into the Lords, where he now sat as Baron Wynford. The bill sought to revive and strengthen the unused compulsory clauses of the Lords' Act, by which a debtor could be forced to surrender his property to his creditors and accept his freedom. A fierce debate developed in the Lords, and although even Eldon ultimately opposed the bill, initially it commanded considerable support except from Lord Plunkett and the Earl of Fife.⁸⁷ A new mood of mercantile bitterness at debtors was developing.

This mood may well explain the curious political fortunes of the abolition campaign in the following ten years. For while in one sense the issue had never been more prominent, with a bill for abolition presented to Parliament in every year between 1833 and 1838,

85 PP, 1831-2, (239), xxv. 46, 75.

86 B. Hawes, p. 14ff; PP, 1840, (274), xvi. p.ix.

87 PD, ser. 3. ii. 1-4; ibid, iv. 483-493, 1246-8.

even its passage in 1838 was fortuitous. Outside the House a growing number of pamphleteers demanded reform. Did this literature have even the slightest influence on proceedings in Parliament?

In the light of the Reform Act of 1832, this question has real interest. For one writer in the Westminster Review argued that since traders were now the largest section of the electorate as a result of the enlarged franchise, they ought to bestir themselves and require Parliament to reform the law.⁸⁸ He quoted a pamphlet which claimed that:

to the existing legal system, more than to any other cause, are to be imputed all the evils, disappointments, and distresses, which, in the conduct of his affairs, have arisen both to himself and others.⁸⁹

However the willingness of the Radicals to speak for the traders does not in itself indicate what the traders wanted. The Royal Commission had shown that small traders were strongly opposed to abolition. They disagreed with the Radicals, and instead found allies in the House of Lords; so ephemeral was "middle class opinion". The Lords who were immune from arrest themselves, were in many cases concerned that reform meant increasing the power of creditors to seize property. Such an increase in the alienability of land could upset the landed estates and hence the social stability of the Kingdom. For their part,

88 Loc. cit., xix. (1833), 205.

89 On the Law of Debtor and Creditor, (1833), quoted by ibid, p. 215.

small traders were opposed to reform because they knew that their debtors had no property worth seizing. That the shopkeepers found such strange defenders should deter the historian from claiming that the 1832 Reform Act changed the structure of politics very much. The few "new men" in the Commons were bankers and the like, who were no more aware of the needs of small traders than any other Members.

The 1832 Reform Act increased the enfranchised opponents to abolition. At the same time, as a legislative programme became part of the business of Government, abolition of civil imprisonment was seriously considered. Nevertheless this was only one issue, and perhaps members could afford disloyalty to their constituents on one measure, as long as they had a better record on other matters. The opponents of abolition constantly lamented that a House which acted rightly over the Corn Laws deserted their middle class loyalties on the issue of Mesne Process arrest.⁹⁰

The abolition of imprisonment for civil debts was proposed by the Solicitor General, Sir John Campbell, in a bill presented to the House of Commons on 13 June 1833. Campbell had previously indicated his willingness to carry out the recommendations of the Royal Commission, but he only introduced the bill at this point because of the taunts of Joseph Hume, and demands outside the House.⁹¹ Little effort

90 Cf. Ibid, xx. (1834), 369.

91 PD, ser. 3. xviii. 785. Cf. ibid, xix. 613.

was expended in trying to hurry the bill through Parliament, and by the end of the session it had made no progress, and only indicated that the Administration had adopted the proposal. The bill sought the abolition of both aspects of civil imprisonment, although Campbell noted that imprisonment on execution "has not generally been so much reprobated."⁹² No great extension of the creditor's powers against his debtor's property were proposed, and the writer in the Westminster Review commented that "this bill is of ministerial origin, and has therefore the characteristics of ministerial halfness and deficiency."⁹³ The Radicals did not approve of a bill which aided the debtor but not the creditor. Compassion for the prisoners was never their thought, and the Westminster urged Parliament not to act in haste.

During the subsequent five years the Whigs presented abolition bills in every session. Melbourne had resolved to alter the law,⁹⁴ although it cannot have been a high priority to the Ministry. Although the opposition was Tory based and looked to Peel, and taunted that abolition was the result of "pseudo-liberality",⁹⁵ the issue was not fought on party lines, and in the eighteen-forties Peel's administration eased the passage of further reform bills. Not every Tory was against reform. A Tory magazine made the bitter complaint, when it feared that the Whigs would

92 Ibid, xviii. 786*.

93 Loc. cit., xx. (1834), 354.

94 R. Gordon, p. 3.

95 PD, ser. 3. xxiii. 1227. Cf. C. Fane, Observations on the proposed Abolition, (1838); British and Foreign Review, v. (1837), 64, 88.

renege on abolition, that it was:

never the sincere intention of the present government to legislate on the matter. The shuffling, the delay, the heartless insincerity, proved either their incapacity or their indifference, or both. ⁹⁶

These were partisan comments, for the general feeling of the House was that compassion obliged them to make some reforms. The main opposition in the Commons during the six years in which reform bills were presented, came from mercantile petitioners. In 1833 the Common Councils of London and Westminster forcibly expressed their objections to the bill.⁹⁷ Such opposition did not daunt reformers. In May 1834 one of the members of the Royal Commission, Sir Frederick Pollock, a Tory, introduced a bill to abolish arrest on Mesne Process. Pollock apparently was seeking to force the hand of the Ministry, which he suspected of having shelved the report of the Commission.⁹⁸ This move was successful, for, with some apologies for his tardiness, Sir John Campbell who was now the Attorney General presented a bill three weeks later which proposed the abolition of both aspects of imprisonment for civil debts. "There was nothing nearer his heart", he declared, than such a reform.⁹⁹ Campbell was a very consistent advocate of reform,¹⁰⁰ but that did not help the passage of a bill introduced so late

96 Fraser's Magazine, xvii. (1838), 187.

97 PD, ser. 3. xxvi. 781; ibid, xxvii. 1055.

98 Ibid, xxiii. 1224.

99 Ibid, xxiv. 412.

100 DNB, iii. 834.

in the session. In 1835 the proposal received much more attention from the Commons, but that year Campbell introduced the proposal as a private member, for Peel and the Tories were briefly in office. The Commons bitterly debated the issue, and the bill survived several divisions. Soon after the Whigs had returned to office, it was referred to a Select Committee. Perhaps this session would see the bill passed.

It did not so eventuate. There was a growing realisation of the unhappiness of traders with the measure, although it sought to guard their interests. The Tory Attorney General had warned that the commercial world was best appeased by very gradual alterations,¹⁰¹ and the Whigs wanted to avoid contentious issues. The merchants were unhappy, for of sixty-six of the petitions presented to the House, fifty-three were against the bill, and their concern was repeated by commercial Members. Mr Rickards, a Tory, bitterly complained that: "on subjects of commercial credit, [Campbell] was not so well informed as he would wish."¹⁰² Benjamin Hawes found it necessary to write a pamphlet to his constituents who had criticised his support of the bill.¹⁰³

However the Commons did pass the bill, which was defeated in the Lords only after consideration of it had been delayed until 31 August. The bill was thought to have been poorly drafted, and was seen as an attempt, "under the mask of humanity (!) to pull

101 PD, ser. 3. xxvi. 565.

102 Ibid, xxix. 1093.

103 B. Hawes, p. 3.

down the aristocracy and landed proprietor of the Kingdom."¹⁰⁴ The weight of mercantile objections was also sensed, and even Brougham acquiesced in the postponement, for he felt that the bill needed more careful scrutiny. As a result he was subjected to some unfair criticism. Robert Gordon, a cousin of the Duke of Gordon, declared that: "the roof of heaven does not this day cover politically speaking, a worse man".¹⁰⁵ The complaint was that Brougham had pecuniary reasons for retaining the old law. The complaint can be dismissed as untrue.

In the session of 1836, the wisest course seemed to be to introduce the bill in the Upper House, and overcome its opposition first. This was the course the Ministry followed, but Cottenham, the Lord Chancellor, did not do so until July. This unwise delay was occasioned by the sickness of Brougham, who was the only notable Whig lawyer in the Lords. The bill was like that of the previous session in the controls it placed upon the power of arrest, but it also proposed the appointment of Commissioners in every county to hear such cases.¹⁰⁶ Such an expensive administration naturally made the bill unpopular. The Duke of Wellington also complained that:

¹⁰⁴ Fraser's Magazine, xvii. (1838), 187. Cf. R. Gordon, p. 4.

¹⁰⁵ Gordon, p. 68.

¹⁰⁶ PD, ser. 3. xxv. 68; ibid, xxxix. 185-192.

to lay hold of these persons,
/debtors on execution/, their
 Lordships were called upon to
 overthrow all the existing
 system of real and personal
 property in England.¹⁰⁷

And he declared that the Whigs had no consideration for shopkeepers.

Unfortunately the issue was raised when many "backwoods-men" peers were in attendance, attracted by the debate over the Births Deaths and Marriages Registration bill, which they amended to embarrass the Dissenters.¹⁰⁸ They took time off to defeat the debtor bill by forty-six votes to twenty-two. The bill was supported by Cottenham, the Duke of Richmond, Lansdowne, Westminster, Headford, Loitrim, Radnor, Charlemont, Minto, Burlington, Melbourne, Holland, Glenelg, Plunket, Poltimore, Templemore, Hatherton and Strafford, and the Bishops of Hereford, Bristol and Lichfield and Coventry.¹⁰⁹ Of the rest, a Whig journal sarcastically commented that:

A prisoner for debt ... is precisely the servile and venial tool which a depraved oligarchy would wish every subject of Britain to be, so long as that venality and servility can be rendered available for certain purposes.¹¹⁰

New tactics were called for, and the bill presented to the Commons in 1837 by Campbell and Benjamin Hawes, the Surrey magistrate who was a future

107 Ibid, xxxv. 72.

108 Cf. R.G. Cowherd, The Politics of English Dissent, p. 93.

109 PD, ser. 3. xxxv. 79.

110 British and Foreign Review, v. (1837), 88.

Under-Secretary for War, was a new draft. The proposal for Commissioners was omitted, and the bill empowered sheriffs to seize the property of judgement debtors and distribute it equitably. Even this draft was not universally acceptable, and one Tory declared that the bill was "framed by a soapboiler [Hawes] and two pettifogging lawyers [Campbell and Brougham]." ¹¹¹ The bill was introduced on 6 February, but it was not rushed through the House. In committee there were divisions over its remedies for creditors. It required the death of the King to expedite proceedings, for by three days after the death, on 30 June, the bill had progressed from the committee stage where it had rested for four months, to presentation to the Lords for their assent. The Upper House was not to be rushed, and they found time only for one brief debate before Parliament was dissolved. Brougham could only urge that proceedings begin in the Lords very early in the new Parliament. ¹¹² The haste in the Commons had not been in order to enact the measure, but to enable the Whigs to face voters and declare that they had sought reform, but that the Lords had prevented it. ¹¹³

That election committed the Whigs to reform, and it was generally felt that they must fulfil the commitment in the new Parliament. Consequently the

111 Fraser's Magazine, xvii. (1838), 173.

112 PD, ser. 3. xxxvii. 1861-3; British and Foreign Review, v. (1837), 65.

113 Quarterly Review, lix. (1837), 253-4.

issue attracted public attention. Traders tried desperately to arouse opposition to abolition.¹¹⁴ They achieved little. The Standard reported the comment of the young Queen Victoria that arrest for debt was illegal, and the abolitionists repeated this with delight.¹¹⁵ Moreover Charles Dickens in the earliest of his serialised novels, Pickwick Papers, committed his hero to the Fleet prison, where Mr Pickwick remarked: "It strikes me, Sam, that imprisonment for debt is scarcely any punishment at all", to which Sam replied, "It's unekal and that's the fault on it".¹¹⁶ Dickens' comments may well have influenced his middle class readers, but they did not necessarily sway Members of Parliament. Despite what some literary critics and others have alleged,¹¹⁷ laws were not passed on the literary merits of their advocates.

In 1838 Parliament passed a bill which abolished imprisonment on Mesne Process. (1 & 2 Victoria c. 110.) The bill was introduced into the Lords in November 1837. At this stage it was a short draft which proposed the abolition of both aspects of civil imprisonment, but it emerged from the Lords Select Committee shorn of the clauses abolishing imprisonment on execution, and with other clauses added to guard

114 E.g. in the pamphlet Imprisonment for Debts Bill: Two Sides.

115 Runnymede Secundus, Magna Charta, p. 3.

116 Op. cit., pp. 586-7.

117 Cf. A. Teetgen, "Dickens and some modern aspects of Penal Reform", Contemporary Review, cxxiv. (1924), 502; E.A. Parry, The Law and the Poor, p. 44ff.

the creditors' interests.¹¹⁸ By making this alteration the Lords chose the circumspect approach of abolishing that aspect of civil imprisonment which was most often criticised. The Ministry accepted this alteration, and with some reluctance but no outright opposition the Lords passed the bill on 12 June 1838. The imminent passage of the bill aroused a final defence of the bill from outside the House. Commissioner Fane of the Bankruptcy Court hurriedly prepared a pamphlet in which he argued that while some amendment of the law was needed, abolition of Mesne Process arrest would deprive the creditor of his means of testing the solvency of his debtors, and would destroy the grounds upon which a trader could be forced into an act of bankruptcy.¹¹⁹ The Commons were prepared to amend the bill to provide alternative means of forcing an act of bankruptcy at the behest of the whole Bankruptcy Court, but they were heedless of Fane's chief argument. They also ignored the protest of the merchant J.H. Elliott, who declared that the bill would endanger millions of pounds of credit.¹²⁰ Despite the large number of petitions against the bill, it was carefully guided through the Commons without significant alterations.

118 PD, ser. 3. xliii. 657, 665. Cf. Lord Esher, The Girlhood of Queen Victoria, i. 241.

119 C. Fane, Observations on the Proposed Abolition, p. 2 and passim.

120 Elliott, A Remonstrance addressed to Lord Brougham, p. 3.

The bill was moderate enough to satisfy most members and it even upset a reformer like Benjamin Hawes, who complained that "it was very far indeed from being the wholesome and salutary measure to which he had on a former occasion given his assent."¹²¹ The preamble to the bill declared that the "present power ... is unnecessarily extensive and severe, and ought to be relaxed." Mesne Process against the person of the debtor was only to be used at the instance of the judges of the superior courts, when there was a likelihood that the debtor would flee overseas. The Insolvent Debtors Court was continued, and could hear petitions for release from judgement debtors or those held under judge's orders within fourteen days of their confinement. Within twenty-one days of the writ of arrest, the creditor could order the sheriff to seize all the lands and goods of the debtor for equitable distribution, but after his release the insolvent was now excused future liability for his debts, which the old law had preserved.¹²²

It was reform of a cautious kind. The full programme that Hawes and Campbell desired was finally completed thirty years later. There is some indication that the Courts used the judge's power to order an arrest more often than the authors of the bill

¹²¹ PD, ser. 3. xliv. 145.

¹²² 1 & 2 Vict. c. 110. ss. i-vi, xxxv-xxxviii, lxxv.

had intended,¹²³ and the continued inadequacy of the law after 1838 was described by another Royal Commission chaired by Thomas Erskine, which in 1840 reported on the bankruptcy and insolvency laws.¹²⁴ The Whigs drafted a bill to implement the Commission's recommendation to abolish all civil imprisonment, but the proposals were very controversial, and the weak Ministry dared not introduce the measure.¹²⁵ Peel's administration would only implement the recommendations of the Commission on bankruptcy reform, but they allowed the passage of a bill introduced by Brougham which permitted the debtor to petition the Bankruptcy Court for protection of his person and property. (5 & 6 Victoria c. 116.)¹²⁶ A further private members bill in 1844 abolished imprisonment on execution for debts under £20.

Why did a reform bill pass in 1838? Several possible explanations have been explored in this chapter. The political explanation is the most obvious but also the least satisfactory. The Whigs were too casual about abolition for it to have been a party issue. Was it, perhaps, the result of middle class pressure? The evidence surely refutes this, for the lower sectors of commercial society were the

123 Cf. the experience recounted by H., Prison Reminiscences, (1859), p. 8.

124 Report of the Commissioners, PP, 1840, (274), xvi. 1-568.

125 Cf. British and Foreign Review, xvi. (1844), 137; Elliott, Credit the Life of Commerce, pp. 113-122.

126 Cf. British and Foreign Review, xvi. (1844), 163; Quarterly Review, lxxvii. (1845), 219-220.

chief opponents of change. It is impossible to describe a "middle class attitude" to the issue, and even more difficult to explain how such an attitude might have influenced Parliament. Or perhaps it was a reform forced upon the House by the problems in administering the Insolvency Act? This may be so, but that legislation was not promoted by the Insolvent Debtors Court, for its outcome was to sharply reduce the clientele of that Court.

The most viable explanation is that there had been a profound change in the public and Parliamentary attitudes to the debtor laws. That this occurred is indubitable. Even an opponent of the 1838 reform like Commissioner Fane was forced to admit that imprisonment for debt was "the occasion of great injustice and cruelty",¹²⁷ and even he offered alternative proposals for reform. The attitude of Members of Parliament had changed in a two-fold way. The old law and even the system of relief now awakened distaste in Members. Moreover this sentiment was clothed in the new garments of a pervasive Benthamite understanding of the function of law, which prevailed far beyond the Radical party. The virtue and not the vice of the 1838 reform was that it remodelled existing insolvency law. What hope had mercantile opinion against such powerful forces?

127 C. Fane, Observations on the Proposed Abolition, p. 7.

EPILOGUE

THE CREDITOR'S LOT

[Mr Micawber] solemnly conjured me, I remember, to take warning by his fate; and to observe that if a man had twenty pounds a year for his income, and spent nineteen pounds nineteen shillings and sixpence, he would be happy, but that if he spent twenty pounds one he would be miserable.¹

The nineteenth century attitude to debtors remained harsh even after the reforms of 1838. Mr Micawber, whose fate was imprisonment in King's Bench, endured his misery before the reforms, but his advice did not lose its force thereafter. For the legislation of 1838 abolished imprisonment on Mesne Process, but not all imprisonment for debt. Brougham, Hawes, and Campbell were disappointed that the alterations were not more complete, but the weak Whig government wished to avoid the controversy this would have aroused. Imprisonment on execution and imprisonment for small debts thus survived.

It is beyond the scope of this study to recount in detail the subsequent course of reform. Nor is it possible to record the complete abolition of civil imprisonment, for the courts can still commit to gaol those who fail to pay some kinds of debts. The 1838 reform was followed by a series of alterations in the

¹ Dickens, David Copperfield, p. 181.

eighteen-forties, however, which together reduced the committals for debt to a quarter of their previous level.²

These reforms were not the work of Peel's government. All of them were introduced by Brougham, although the Tories smoothed their passage through the House. In 1842 a statute provided procedures by which insolvent persons could petition the Bankruptcy Court to avoid imprisonment. (5 & 6 Victoria c. 116.) For those whose debts were large, this was a beneficial procedure. Brougham's mind seems next to have turned to small debtors who could still be held on execution. His statute of 1844 abolished imprisonment on execution for debts under £20, unless the debtor was wilfully responsible for his inability to pay. (7 & 8 Victoria c. 96.) Thus imprisonment for small debts, which had been the cause of so much suffering, was virtually abolished, although in fact in the years preceding its abolition, its use had declined.³ Such a measure upset the basis of the Courts of Requests that had continued to multiply throughout the country. Consequently the Ministry accepted with some amendments Brougham's "County Courts Act" of 1846, (9 & 10 Victoria c. 95), which abolished all the old Courts of Requests and established a new unified court system, with cheaper more summary procedure for debts up to £20, and provision

2 Cf. PP, 1847-8, (207), li. 172.

3 W. Winder, "The Courts of Requests", LQR, lii. (1936), 382.

in certain cases for payment by instalments and trial by jury.⁴

The establishment of County Courts was a profoundly significant development in debtor law. Their responsibilities were gradually increased to debts of £50, and their powers extended into equity. The duties of the touring Commissioners of the Insolvent Debtors Court were transferred to them in 1847, and in 1861 the Insolvency Court was finally abolished, and its remaining powers passed to the County Courts and the Bankruptcy Court.⁵ The County Courts were more comprehensive in scope than the Court in Portugal Street, and therefore they were more durable. They were so effective that there was an unexpected increase in imprisonment for "fraudulent debt", partly because the fraud might be no more than inability to account for the failure to pay.

The statute of 1861 merged bankruptcy and insolvency for all debts above £50 by removing the distinction between those who were traders and those who were not. Its logical correlative was the Debtors Act of 1869, which abolished imprisonment for debts of over £20 in execution. (32 & 33 Victoria c. 62.) Imprisonment for debt was abolished! After the jubilation, observers noticed that the County Courts

4 Cf. "An Act for the better securing of the Payment of Small Debts", Quarterly Review, lxxvii. (1845), 215-220.

5 Cf. 10 & 11 Vict. c. 102; 12 & 13 Vict. c. 110; 13 & 14 Vict. c. 61; 15 & 16 Vict. c. 54; 19 & 20 Vict. c. 108; 24 & 25 Vict. c. 134.

were continuing to imprison debtors who failed to pay on the order of the Court, or who were fraudulent. They did so on the basis of an escape clause in the 1869 act. Until 1914 more than four thousand persons were imprisoned every year for such offences.⁶ The law was amended in 1914, but the exceptions still remained in the cases of crown debts and certain court orders, including those for the payment of maintenance to separated wives. In 1969 the Payne Commission recommended a further partial abolition, which was enacted in 1970.⁷ Incidentally New Zealand laws continue to permit imprisonment in more cases than does the most recent English law.

The survival of civil imprisonment is largely unnoticed today, but realisation of it may help the contemporary observer to answer the query framed by John Dillon in 1894, who commented on the old law:

As we look back upon the absurdity, impolicy, and cruelty of imprisonment for debt, we wonder what influences had stupified the conscience and intelligence of mankind, that laws so atrocious were so long endured.⁸

This thesis has suggested a number of explanations for the tardiness of reform. Firstly, recalling its significance alongside other issues of the period, it

6 Cf. L. Leone, "On Imprisonment for Debt", (1874); R. Lowe, "Have we abolished Imprisonment for Debt?", Fortnightly Review, n.s. xxi. (1877), 307-316; Ford, Michigan Law Review, xxv. (1927), 31.

7 Cf. J.D. Unwin, The Scandal of Imprisonment for Debt, (1935); M. Zander, Cases and Materials on the English Legal System, pp. 414-9.

8 Dillon, Laws and Jurisprudence of England and America, p. 359.

should be noted that although abolition was long delayed, Parliament had for many years sought to eliminate the absurdity, impolicy and cruelty of the practice. Eighteenth century Parliaments lacked neither conscience nor intelligence. They sought to control the effects of the debtor law, though they never thought of altering the law itself. From the time of the Restoration in 1660, acts were passed to relieve the prisoners. By 1759 these had matured into the Lords' Act for judgement debtors, and regular temporary acts that aided others. These compassionate statutes were thought to have relieved all those who suffered under the law, even if in fact they had not done this. The first cause of the nineteenth century alterations in the law was better information about the problems of debtors. The Thatched House Society was an important source of this information, and the Society also set an example of a system of permanent relief. There was a profound change in public attitudes to the problem in the period from 1770 to 1820, and one of its chief causes was the revelations of John Howard and James Neild.

In the eyes, then, of early nineteenth century Members of Parliament, the problems of debtors did not seem as serious as Dillon was later to describe them. His puzzlement might have been further reduced had he realised that imprisonment for debt was not the only aspect of the debtor laws at issue. For there was further discussion about the desire of traders that the property of debtors be more readily seized. Traders were not prepared to surrender their power

over the body of the debtor unless they could more easily secure his property. Such demands were resisted by the landed aristocracy, who feared that if the ownership of land was thus endangered, society itself would be weakened.

Traders found arrest on Mesne Process a useful adjunct to mercantile law, for it induced many debtors to pay. Not unnaturally traders were reluctant to lose such a power altogether, for it was felt that there were some cases when only imprisonment would make debtors co-operative. This evaluation of the law was mistaken. Certainly many debtors paid when they were arrested, but those unable to pay were rendered even less able by imprisonment. Those unwilling to pay could enjoy comfort and ease in prison until released by the Insolvent Act. As the proverb put it, "a prison pays no debts".

If imprisonment was pointless, why was it used? Simply because to the creditor it did not seem pointless, considering the alternatives. Attachment of property was inadequate against debtors whose wealth was in land, or government bonds, or whose debts were small. Such procedure was also slow and expensive, and made more so by the high fees and cumbersome actions of sheriffs. In contrast, a capias led to the rapid arrest of the debtor before the legal formalities of the trial. Traders therefore defended a law which protected them when nothing else in commercial law did, although they would have preferred effective attachment powers over property. When reform came in 1838, it inevitably included such provisions.

Over a period those new powers of attachment proved inadequate. Thus the abolition of imprisonment for debt upset the structure of mercantile law, which on 12 March 1847 The Times described as a "shapeless undigested mass" with "rotten foundations".⁹ The ultimate effect of the abolition was the removal of the protection of the law from small contracts, for attachment of property was ineffective in such cases. In the long term there has been a very marked decline in the use of litigation to recover debts because the law is no longer able to induce the recalcitrant debtor to pay.¹⁰ The law has abandoned the small trader.

Thus a second explanation for the delay in reform was the reluctance of traders to abandon the practice without the provision of some alternative; an alternative the landed nobility and gentry were hesitant to provide. A third reason was the survival of a traditional concept of the role of law in society. Men of the eighteenth century did not seek to change the law, because they thought of law as an immutable framework within which society functioned. There might be relief from the law, even in a permanent provision like the Redesdale Act of 1813, but the authority of the law remained. Benthamite Radicalism provided an alternative theory of jurisprudence. Nineteenth century Radicals proposed to alter the laws in order to bring about reforms. Such reforms necessarily

9 Quoted by C. Fane, Bankruptcy Reform, (1848), p. 6.

10 Cf. Zander, p. 396.

proceeded from private initiatives, for England never had a Minister of the Crown responsible for law revision. When the debtor laws were changed, a Utilitarian approach to law was accepted by reformers, although this does not mean all Utilitarians approved of reform. The Westminster Review belatedly objected to reform in 1845, and three years later John Stuart Mill complained that the revised law treated "the fact of having lost or squandered other people's property [as] a peculiar title to indulgence", and he attributed abolition to "modish humanity".¹¹ Such comments show that Benthamite principles could lead to several conflicting conclusions over any specific issue. Those who favoured abolition of civil imprisonment were also influenced by the humanitarian tradition; those who opposed it influenced by the trading morality.

These reasons for the delay in reform are linked with the slowness of "middle class opinion" to make any impact on English legislation. Reform of the commercial code was never of great importance in Parliament. Some commercial Members regularly raised the issue in the House, but the Commons was not interested. Debates on the insolvency laws rarely attracted more than one hundred Members. Like Mr Fantom in Hannah More's story, they were too occupied with reducing the National Debt to spare time to help

11 Mill, Principles of Political Economy, p. 907; Westminster Review, xliv. (1845), 449-468.

imprisoned debtors.¹² The House of Commons was not a middle class parlour. Moreover neither insolvency reform nor opposition to it was really suitable for a middle class campaign. Too many of the victims of the law were shopkeepers put there by fellow shopkeepers. The law was not of crucial significance to any other group. Reform took place not as a concession to middle class opinion, or an attack on it, but because more information on the problem fed a more humanitarian attitude, which expressed itself in a Utilitarian approach to law. In addition it had come to be the case that the old law required more prison space and legal supervision than its alternative.

The old law had strong support only from the trading classes, who in a poll taken by the 1831 Royal Commission preferred it to reform by 259 votes to 61.¹³ It was they who were most vociferous against abolition, and they who were most affected by it. Two consequences of reform may be isolated, although these do not include a decline in the number of shopkeepers, for in fact they increased twice as fast as the population from 1851 to 1881.¹⁴ The first was instead a sudden change from credit sales to cash sales, which became the largest proportion of the turnover of many late nineteenth century shops.¹⁵ The second was a new

12 H. More, Works, i. pt. 2. 9.

13 PP, 1831-2, (239), xxv. 54, 77.

14 Charles Booth, "Occupations of the People of the United Kingdom, 1801-1881", Journal of the Statistical Society, xlix. (1886), 335.

15 Cf. D. Davies, A History of Shopping, pp. 258-9.

form of trading morality shown in greater caution by shopkeepers where credit was in fact granted. The eighteen-forties saw the rise of a new type of organisation among traders, which became the basis of a stronger corporate sense among such men. This was the debt collecting agency, an early example of which was the "London Association for Protection of Trade".¹⁶ This influential body appears to have had curious origins, for its title is remarkably close to that of the "Society for the Prevention of Frauds on Trade" which was formed in 1816 to campaign against the Redesdale Act. The link is confirmed by the fact that the President of the earlier body, Peter Laurie, was a patron of the later one. Laurie, who served as President of the Saddlers Company in 1833, and who rose by this means to become Lord Mayor of London, was a disciple of Joseph Hume, though he evidently did not share Hume's attitude to the debtor laws.¹⁷ Thus opposition to reform had a long-term significance for the organisation of traders.

Moreover that opposition helped to consolidate trading opinion. Small Traders were well represented in the Common Council of the City of London, which several times voiced its concern at attempts to change the laws. Joseph Hume and Bentham were the heroes of

16 Elliott, Credit the Life of Commerce, pp. 62-3.

17 PP, 1816, (472), iv. 20/365; DNB, xi. 651.

such traders,¹⁸ but they interpreted Bentham as an opponent of abolition. Radicalism was not permitted to threaten the shopkeeper's pocket. This consolidation of trading opinion continued, as the revision of the law continued. In February 1847, a series of meetings in London resolved:

That it is the deliberate opinion of this meeting that the existing Bankruptcy and Insolvency Laws are a disgrace to our age and country. That under their shelter, deceit, reckless trading, extravagance, dishonesty, and every species of fraud may be practised with impunity. ... [thus] undermining commercial morality ... especially [in] the industrious classes.¹⁹

In defeat, trading morality became a distinctive middle class cry. This was the major result of the campaign opposing debtor law reform, (and it was the opponents, not the advocates of reform, who mounted the most vigorous campaign on the issue). The debate helped to formulate what Harold Perkin has called the "entrepreneurial ideal".²⁰ The debtor who failed to survive in the commercial society was thought worthy of a punishment administered by the trader. Aristocracy and working classes ought to submit to the authority of trade.

The abolition of imprisonment for debt stripped one of their few powers from the traders. It forced

18 Elliott, p. v.

19 Quoted by Fane, Bankruptcy Reform, p. 6.

20 H. Perkin, The Origins of Modern English Society, p. 221.

them to defend their morality, and led them to seek support for their cause. J.H. Elliott and Commissioner Fane were such supporters. Even J.S. Mill recognised their pre-eminence and praised their judgement, for in defeat, trading morality became a force that Radicalism felt obliged to absorb.

Imprisonment for civil debts was never regarded as a fundamental evil by Englishmen of the eighteenth and nineteenth centuries. Few debtors were as attractive in character as Mr Micawber, and their sufferings were hidden behind the gates and walls of prisons. Nevertheless, three Select Committees from the House of Commons and one from the House of Lords as well as two Royal Commissions reported on the practice, and confirmed its bad reputation. By 1838 it was almost universally condemned, except by traders, and even some more wealthy merchants were prepared to surrender their power to arrest. Legal and social conservatism underlay part of the opposition to abolition, but the key opponents were the forces of trade. Thus the movement to abolish imprisonment for debt attacked and defeated the growing forces of trading opinion, in the name of civil liberties. Historians err when they describe liberty and trade as permanent allies.

APPENDIX ONECOMMITTALS FOR DEBT IN 1801, IN COUNTY TOTALS

The 1819 Sessional Papers provide lists of committals to all English gaols for the previous twenty-one years. The year 1801 was chosen because a census was held that year, and because James Neild's figures were from the same period. However thirty-nine gaols could not report their committals in 1801. It was therefore necessary to estimate these figures, which was done by assuming that taken together the growth in the population of these gaols would have been the same as for other gaols. Consequently the figures were approximated by scaling down either their 1811 or their 1818 figure by the net national proportion. It should be pointed out that in most cases the gaols which did not report their committals were small ones.

Neild's lists of those in gaol in 1800 when he visited are also provided here, in order to determine whether a high committal rate also meant a large gaol population. If this was not so, it could be assumed that the average period of confinement in that county was shorter than in others.

These figures were then divided throughout by the County populations reported in the 1801 census, and it is these figures which were used in Figure One on page 47.

<u>County</u>	<u>No.</u> <u>of</u> <u>Gaols</u>	<u>Committals</u>	<u>Debtors</u>	<u>Committals</u> <u>Population</u> <u>x 10,000</u>	<u>Debtors</u> ÷ <u>Committals</u>
Bedford	1	9	4	1.420	0.45
Berkshire	3	21	10	1.923	0.48
Bucks	2	50	17	4.654	0.34
Cambridge	4	35	12	3.917	0.34
Chester	3	67	40	3.494	0.60
Cornwall	2	31	10	1.647	0.32
Cumberland	1	56	28	4.777	0.50
Derby	2	32	13	1.986	0.41
Devon	6	86	38	2.507	0.44
Dorset	4	19	7	1.648	0.37
Durham	1	43	14	2.681	0.33
Essex	2	78	17	3.445	0.22
Gloucester	4	68	25	2.946	0.37
Hampshire	5	109	33	4.962	0.30
Hereford	3	36	11	4.036	0.31
Hertford	3	10	10	1.025	1.00
Huntingdon	1	12	5	3.194	0.42
Kent	6	193	52	6.274	0.27
Lancaster	2	475	132	7.061	0.28
Leicester	2	52	20	3.997	0.38
Lincoln	6	61	14	2.925	0.23
Middlesex*	3	1228	519	15.010	0.42
Monmouth	1	8	11	1.755	1.38
Norfolk	4	49	36	1.792	0.74
Northampton	3	28	13	2.125	0.46
Northumberland	3	75	14	4.774	0.18
Nottingham	3	34	14	2.423	0.41
Oxford	2	31	20	2.828	0.45
Rutland	1	1	-	0.611	-
Salop	3	44	23	2.625	0.52
Somerset	4	189	50	6.904	0.26
Stafford	4	54	22	2.258	0.41
Suffolk	3	60	17	2.851	0.28
Surrey*	5	1211	476	45.011	0.39
Sussex	2	18	7	1.130	0.39
Warwick	2	56	34	2.690	0.61
Westmorland	1	11	6	2.643	0.55
Wiltshire	1	24	17	1.297	0.71
Worcester	3	49	18	3.517	0.38
York	13	534	106	6.217	0.20
All England	124	5347	1954	6.418	0.37
Wales	18	117	52	2.137	0.23
England and Wales	142	5464	2006	6.154	0.37

* Including the national prisons of Fleet in Middlesex, and King's Bench in Surrey.

Source: Committals; PP, 1819, (237), xvii. 145ff.
Debtors; Neild, Persons Confined, (1800).
Population; PP, 1812, (12), x. 171-4.

APPENDIX TWOSOCIAL CLASSIFICATION OF DEBTORSRELEASED BY THE COURT, 1821-2.

These figures are estimated from a complete list of the names and occupations of the debtors whose petitions were heard by the Court in the period. The sample of 270 from the total of approximately 4000 represents c. 6.75%. The sample was all those debtors whose names began with A, and half of those whose name began with B.

The list is arranged in the categories Patrick Coloquhoun used, as set out by Harold Perkin. It was not easy in every case to turn a list of trades into a list of classes. Neither the debtors nor Coloquhoun explain whether a "manufacturer" is a master or an employee. "Artisans" and "manufacturers" tended to be almost indistinguishable. Shopkeepers have been broken down into subdivisions. The amount of the debts has been indicated.

	<u>Debts</u>			<u>Total</u>	<u>Coloquhoun's Numbers of Families</u>
	<u>£20-£100</u>	<u>£100-£300</u>	<u>£300-</u>		
I. <u>Aristocracy:</u>					
Gentry	1	3	9	13	27,204
II. <u>Middle Ranks:</u>					
1. Agriculture					
Freeholders, Farmers	1	6	6	13	320,000
2. Industry & Commerce					
Merchants {1}	[bankrupt laws]				2,000
Merchants {2}				11	13,000
	0	1	10		

Manufacturers	0	12	12	24	25,000
Warehousemen	0	1	1	2	500
Shipbuilders,					
owners	1	1	3	5	5,300
Surveyors,					
Engineers	0	0	1	1	5,000
Tailors	2	4	7	13	25,000
{ Grocers	0	8	21	29	}
{ Bakers	0	5	8	13	
{ Butchers	1	5	6	12	
{ Druggists	0	1	2	3	
{ General, Dealers	0	5	9	14	
All Shopkeepers	1	24	46	71	74,500
Innkeepers, etc.	0	0	7	7	50,000
Clerks, Shopmen	1	5	11	17	30,000
3. Professions					
Civil Offices	1	1	6	8	12,500
Law	0	1	6	7	11,000
Clergy	0	0	1	1	13,500
Arts, Sciences	0	0	1	1	16,300
Education	0	1	1	2	20,500
Navy, Army					
Officers	0	1	2	3	10,000
Theatrical	0	0	3	3	500
∟ Females	1	3	1	5	7

III. Lower Orders:

Artisans	9	9	19	37	445,726
Hawkers, Pedlars	1	0	0	1	800
Seamen	2	6	1	9	105,000
Labourers	6	5	6	17	340,000

(Miners, Canal Workers, Soldiers, Vagrants, Pensioners, Debtors [sic], Paupers, Vagrants are also listed by Coloquhoun.)

Source: PP, 1822, (276), xxii. 203/16-23.
H. Perkin, The Origins of Modern
English Society, pp. 20-1.

APPENDIX THREE

COMMITTALS FOR DEBT AND THE
BUSINESS CLIMATE, 1798-1818.

Table Two on page 57 totals the figures mentioned in Appendix One for those ninety-nine prisons which had complete figures for the whole period. These figures reveal an astonishing increase in committals. They were scaled relative to the changing population, but still showed an increase of sixty percent over twenty-one years.

A linear regression analysis plotted the growth.

It was found to be:

$$Y_k = 4786.15 + (7.1)K^2, \quad K = 1, 2, \dots 21.$$

where Y_k = the number of committals in any year K

K = any year 1798 to 1818, where 1798 = 1 ...

$$S.D. = 1055.88$$

$$r = 0.9448$$

Thus a projected figure was obtained for every year, and it was then subtracted from the actual figure for any year. This produced a new range of values, called Z. The values of Z were then placed in a linear regression with the figures for the business climate in each year, (which may be called W), as estimated by Gayer, Rostow, and Schwartz.

Two hypotheses were then tested:

First: That the number of debtors was related to the business climate.

Second: That the Redesdale Act of 1813 significantly affected the number of committals for debt thereafter.

The linear regression for the years 1798 to 1818 produced the equation.

$$Z = (8.23)W - 20.24$$

$$\text{S.D. for } Z = 345.96$$

$$r = 0.03695$$

With such a low r -value, these results have no statistical significance.

For the years 1798 to 1813 the following equation was obtained:

$$Z = (78.74)W - 185.78$$

$$\text{S.D. for } Z = 56.11$$

$$r = 0.5368$$

These results achieve a reasonable level of significance.

Thus hypothesis one is confirmed for the years 1798 to 1813. No more accuracy could have been obtained using the index of Gayer, Rostow, and Schwartz, which they admit is very basic.

Hypothesis two is also confirmed, because of the abnormality of the years 1814 to 1818, and the high value of Z in those years.

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A. Primary Materials

- I. Official
- II. Pamphlets
- III. Contemporary Novels
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B. Secondary Materials

- I. Reference
- II. Legal History
 - (a) Books
 - (b) Articles
- III. Prison History
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